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इस भाग में मिलानुष्ठानों को जहाँ है जिनमें कि यह अलग
संकलन को रखने देखा जायके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 13 अगस्त, 1996

आ.नं. 90 :- लोक प्रतिनिधित्व अधिनियम, 1951
(1951 का 43) की धारा 106 के अनुसूचन में निर्वाचन
आयोग पत्रावली 1991 की निर्वाचन वर्गों सं. 4, 5 व 6
में दिया गया पटना उच्च न्यायालय (पटना) का तारीख
14-5-1996 का निर्णय प्रकाशित करना है।

(निर्वाचन अधिसूचना के संश्लेषण भाग में दिया है)

[सं. 82/वि.नं./ (4-5-6/91)/96]

आदेश से,

स. आर. शर्मा, सचिव

ELECTION COMMISSION OF INDIA
New Delhi, the 13th August, 1996

O.N. 90.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order dated the 14-5-1996 of the High Court of Judicature at Patna in Election Petitions No. 4, 5 and 6 of 1991.

ANNEXURE

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Case Nos. 4, 5 and 6 of 1991

In the matter of an application under Sections 80, 80 A and 81 of the Representation of the People Act, 1951
Ram Boran Thakur and others
(in E.P. No. 4 of 1991)

Petitioners

Versus

Shri George Farnandis
Raghunath Pandey
(in E.P. No. 5 of 1991)

Respondent
Petitioner

versus

Shri George Farnandis
Rajeshwar Thakur
(in E.P. No. 6 of 1991)

Respondent
Petitioner

Versus

Shri George Farnandis
For the Petitioners
(in all the Election
petitions i.e. 4, 5 and 6 of
1991)

Respondent
M/s. S. N. P. Sharma,
Ramanugrah Prasad
Singh, Aarendra
Kumar Singh and Mrs.
Abha Singh, Advocates.

For the respondent
(in all the Election
petitions)

Mr. Ganga Id. Rai,
Sr. Adv. Ram
Bihar Thakur and
Mirtyunjay Sharma, Advs.

PRESENT :

Hon'ble Mr. Justice Aditya Narayan Chaturvedi.

A. N. Chaturvedi, J.—These three election petitions under Sections 80, 80-A and 81 of the Representation of the People Act, 1951, have been filed for declaring the election of sole respondent, Shri George Farnandis from 10 Muzaffarpur Parliamentary Constituency as void and hence have been heard together and are being disposed of by this common judgment. Election Petition No. 4 of 1991 has been filed by Shri Ram Baran Thakur, a duly nominated candidate from 10 Muzaffarpur Parliamentary Constituency, and Shri Ashok Kumar on the ground of improper rejection of the nomination papers of petitioner No. 2 Ashok Kumar. Election petition No. 5 of 1991 has been filed by Shri Raghunath Pandey, one of the contesting candidates on the grounds that there was wrong allotment of symbol to Rajeshwar Thakur one of the contesting candidates, the respondent indulged in corrupt practices, and illegalities and irregularities were committed in counting of ballot papers etc. Election Petition No. 6 of 1991 has been filed by Shri Rajeshwar Thakur, one of the contesting candidates. The sole ground on which the election is impugned by the election petitioner of Election Petition No. 6 of 1991 is the non-compliance of clause 12(3) (c) of the Election Symbol (Reservation and Allotment) Order, 1968 and wrong allotment of symbol to him.

2. The common case of the election petitioners of these three election petitions as made out in their election petitions is that the President of India by a notification called upon the people of Parliamentary Constituencies to elect members of 10th Lok Sabha and the Election Commission of India notified an election programme fixing dates for filing nomination papers, scrutiny of nomination papers, withdrawal of candidature and the date of poll etc. The District Magistrate of Muzaffarpur was designated as Returning Officer for the election in question. As many as 48 candidates including the petitioners and the respondent presented their nomination papers before the Returning Officer within specified period. The Returning Officer scrutinised the nomination papers of all the candidates and accepted the nomination papers of all except two namely, Sitaram Rai and Ashok Kumar (one of the petitioners in E.P. No. 4 of 1991). No objection had been raised by candidates or their proposers or anyone else against the nomination papers of Sitaram Rai and Ashok Kumar. None of the candidate withdrew his candidature. The polling took place on 20-5-91 and repolling was held at 49 polling stations on 12-6-91. The counting of ballot papers commenced on 16-6-91 and was completed at late night of 17/18th June, 1991. The Returning Officer announced the result of the election on 18-6-91 declaring respondent George Farnandis as elected candidate in the election in question.

3. Further case of the Petitioners of Election petition No. 4 of 1991 is that the election of sole respondent Shri George Farnandis is illegal and void due to improper rejection of both the nomination papers of petitioner No. 2 Ashok Kumar on the vague ground that his nomination papers were incomplete. All the relevant columns of the nomination papers of petitioner No. 2 Ashok Kumar had been duly and properly filled up and in case the nomination papers were incomplete or inaccurate in any respect, the Returning Officer was bound to permit any such in accurate description or clerical or technical error to be corrected or direct that such inaccurate, clerical or technical error in the nomination papers be overlooked as required by the proviso to Section 33 (4) of the Representation of the People Act, 1951. Apart from that there was no difficulty in identifying the candidate (petitioner No. 2) and/or his proposer who could point out to the Returning Officer the relevant entries in the electoral roll on being given adequate and reasonable opportunity as the electoral roll of the concerned assembly constituency was before the Returning Officer. On the allegation aforesaid the petitioner of Election petition No. 4 of 1991 have prayed for declaring the election of sole respondent namely, Shri George Farnandis from 10 Muzaffarpur Parliamentary Constituency as void.

4. It is the common case of the election petitioners of Election petition No. 5 of 1991 and Election petition No. 6 of 1991 to that Rajeshwar Thakur (election petitioner in E.P. No. 6 of 1991), one of the contesting independent candidates, in the relevant column of his nomination paper

indicated his choice of symbol as Bi-cycle, Lion and Car which were free symbols. Four more independent candidates, namely, Bindeshwar Singh, Md. Israil, Binod Rai and Bindeshwar Rai were claimants of election symbol "Lion". Besides there were more than one claimant for Bi-cycle and Car as their election symbol. Under the circumstances it was the duty of the Returning Officer to decide allotment of symbols Lion, Bi-cycle and Car by lot in accordance with the mandatory provision of clause 12(3)(c) of the Election Symbol (Reservation and Allotment) Order, 1968 but he did not do so rather allotted Bi-cycle symbol to Ram Sresth Mishra and car symbol to Amitav Kumar and did not allot Lion symbol to any one. Rajeshwar Thakur was allotted Box as his election symbol and he made canvassing amongst the voters to cast votes on symbol Box allotted to him but on the day of poll the voters did not find Box symbol against the name of Rajeshwar Thakur on the ballot paper as Ball had on printed as symbol against the name of Rajeshwar Thakur and hence did not vote for him though he was very popular amongst the illiterate downtrodden, weaker and backward sections of society and had fair prospect of success in the election in question. Wrong and illegal allotment of symbol to Rajeshwar Thakur has materially affected the result of election in question as majority of votes which have gone in favour of sole respondent would have gone in favour of Rajeshwar Thakur.

5. It is also the case of the petitioner of Election Petition No. 6 of 1991 that the Election Commission of India sent a direction to the Returning Officer aforesaid on 17-6-91 staying the declaration of final result till further direction issued by the Commission and asked for a report from the Returning Officer on various allegations made against him (Returning Officer) by Shri Raghunath Pandey, one of the contesting candidates and petitioner in E.P. No. 5 of 1991, including commission of irregularities in counting of ballot papers but the Returning Officer did not send correct report and declared the final result in violation of mandatory provision of Section 66 of the Representation of the People Act and under the circumstances the declaration of result is void and fit to be declared void. Under Memo No. 714 dated 13-6-91 a letter was issued from the Collectorate under the signature of Deputy Election Officer to Returning Officers to appear in election office for necessary report relating to election in question. It was done so only three days prior to the commencement of counting of ballot papers with a view to get sole respondent elected by making manipulation in the report to be prepared by the Presiding Officers on the eve of counting and long after the polling. On the allegations aforesaid, election petitioner of E.P. No. 6 of 1991 has prayed for declaring the election of sole respondent as void.

6. Further case of the petitioner of E.P. No. 5 of 1991 is that the respondent belongs to the party in power in the State of Bihar and the Chief Minister of Bihar had made utterances which were published in newspaper that no a single congress candidate would be allowed to win and even if he would win the election, he would not be provided certificate of declaration and even if he obtains certificate of declaration, he would not be allowed to go to Delhi. In order to put his utterances into practice, the Chief Minister on the eve of issuance of notification of the President of India calling upon the people to elect their members of Parliament, made transfer of District Magistrates and Superintendents of Police besides other officials on mass scale, including that of Muzaffarpur. The Election Commission of India took serious view of the mass transfer on the eve of election and directed the State Government not to implement the transfers but to no effect. At the instance of the respondent the Returning Officer became so biased against other candidates that he did not permit more than 8 vehicles to any contesting candidate except the respondent on whose behalf 100 vehicles were running for canvassing purposes. The petitioner (Shri Raghunath Pandey) and contesting candidate Ram Baran Thakur (one of the petitioners in E.P. No. 4 of 1991) protested against the said discrimination by filing separate petitions but the Returning Officer ignored the same. The polling on 20-5-1991 was completed by the evening but the ballot boxes reached the strong room by the evening of 21st May, 1991 though the distance from the Strong Room of the polling stations was not more than 25 kilometers and it creates suspicion of manipulations in the ballot boxes. In the elections earlier to the election in question, the Collectorate compound was used as venue for storage of ballot boxes and for count-

ing of ballot papers but the Returning Officer shifted the venue to Sikandarpur Stadium which was incomplete, with a view to replace the real ballot boxes with duplicate ballot boxes. Several contesting candidates, including the petitioners protested against the motivated game of the Returning Officer.

7. It has been further alleged by the election petitioner in E.P. No. 5 of 1991 that on 17-5-1991 he filed a petition before the Returning Officer with a prayer to declare certain booths as sensitive and deploy armed forces, B.S.F. and C.R.P.F. to these booths to ensure free and fair poll but the Returning Officer instead of declaring the booths as mentioned in the petition, sensitive and deploying B.S.F., C.R.P.F. armed forces there, sent armed forces to the booths which were peaceful and where the petitioner was most popular and left the sensitive booths at the mercy of God by deputing some police with lathi, homeguards and chavkidars though the Election Commission had prohibited the deputation of Homeguards for election duty. The Returning Officer did so with a view to facilitate commission of illegality in polling. Prior to the date of poll the Returning Officer at the instance of the respondent got done flag march by C.R.P.F. and B.S.F. only in three villages where the supporters and voters of the petitioners reside with a view to make them panicky. Besides that, the supporters of Jan a Dal including many ministers, namely, Shri Braj Bihari Prasad, Ramai Ram, Hind Keshari Yadav and M.L.A., namely, Shri Kamal Paswan and Maheshwari Yadav accompanied by armed men visited many villages where supporters and voters of the election petitioner were residing in order to terrorise them. The petitioner and his election agent filed two petitions on 17-5-91 before the Returning Officer in this regard but no action was taken by the Returning Officer. Prior to the date of poll the respondent distributed firearms, cartridges, bomb worth Rs. 20,00,000 amongst supporters in four assembly constituency segments, namely, Kurhani, Bochaha, Minapur and Sakars for capturing booths. On coming to know about it the election agent of the petitioner filed petition on 17-5-91 before the Returning Officer with prayer to capture the illegal arms. On the date of poll the respondent in the company of Shri Brij Bihari Prasad (State Minister, Government of Bihar) and hundred armed anti social elements went to booth Nos. 10, 10-K and 11 situated at Ramesher Singh Mahavidyalaya and after talk with Braj Bihari Prasad, left the said booths and thereafter Braj Bihari Prasad and his armed men terrorised the Presiding Officers of the said booths and began to stamp blank ballot papers in favour of respondent after taking the stamp from the concerned Presiding Officers and were caught red-handed by the petitioner. The Presiding Officers of booth Nos. 10 and 10-K sent reports to the Returning Officer in this regard.

8. Further case of the election petitioner in E.P. No. 5 of 1991 is that the respondent procured the help of Returning Officer in the matter of appointment of Presiding Officers of his choices, locating the venue of counting at Sikandarpur Stadium, reception of void votes in his favour counting of invalid ballot papers pertaining to these booths where more than 90 per cent votes had been polled, mixing and counting of ballot papers of the petitioner in his favour and commission of other illegalities and corrupt practices to ensure success in the election. Apart from that genuine ballot boxes containing ballot papers stamped by genuine votes were replaced by another set of ballot boxes containing ballot papers stamped in favour of the respondent either in transit from booths to the strong room or in the strong room with the help of Shri P. C. Verma who replaced several original ballot boxes. The Returning Officer committed further illegality by not sealing the Strong Room where ballot boxes were stored, for more than a week inspite of written and oral requests made by the contesting candidates to seal the strong Room and thereby facilitated replacement of the ballot boxes of 200 booths by his confident Shri P. C. Verma and others with the consent of the respondent. In this regard a written complaint was made to the Returning Officer on 23-5-91 by the election agent of contesting candidate Ram Baran Thakur. At the time of counting the counting agents of the contesting candidates were made to sit at a distance of three feet from the counting tables and wire net of eight feet height was erected in between the counting tables

and the counting agents with a view to obstruct the view of counting agents and as a result of that the counting agents of contesting candidates were unable to see the actual scrutiny and counting of ballot papers. The protest by counting agents in this regard and against commission of illegalities in counting of votes was ignored. When counting agents protested against mixing of 48 ballot papers of the petitioner appertaining to four booths of Minapur Assembly Constituency segment with the ballot papers of respondent and declaration of the same as 50 ballot papers of respondent, they were beaten leading to commotion. The Returning Officers with a view to pacify the agitated counting agents announced that erring counting supervisor would be sent to jail but he was let off and the election agent of the petitioner filed a petition on 16-6-91 before the Returning Officer for recounting the ballot papers of Minapur Assembly Constituency segment.

9. Further case of the petitioner in E. P. No. 5 of 1991 is that in course of counting of ballot papers of Kurhani Assembly Constituency Segment the ballot papers were found stacked in the ballot boxes in bundles at sixty two booths (as detailed in paras 28 and 42 of the election petition) and all such ballot papers were in favour of respondent. Protests were made in behalf of the contesting candidates, including the petitioner, and their counting agents but no action was taken and all such void votes were counted in favour of respondent at the direction of the Returning Officer. The petitioner learnt that at the said booths as well as on 21 booths of Sakra Assembly constituency segment and 10 booths of Bochaha Assembly constituency segment and 54 booths of Minapur Assembly constituency segment the Presiding Officers and polling parties themselves put ballot papers in the ballot boxes after stamping them in favour of respondent in collusion with the respondent and at the direction of Returning Officer. The polling percentage at the said booths of Kurhani Assembly constituency segment was above 90 and 96 percent and that on said 21 booths of Sakra Assembly constituency segment was above 80 per cent on 50 booths of Kurhani Assembly constituency segment and 54 booths of Minapur Assembly Constituency segment approached 89 percent and 80 percent and above respectively, but almost all the ballot papers were in favour of respondent and other contesting candidates got negligible, minimal and microscopic number of votes. Written protest was filed on 16-6-91 before the Returning Officer by the election agent of the petitioner. Other contesting candidates had also raised objection. The petitioner maintained his lead over respondent up to various rounds of counting of ballot papers and thereafter the Returning Officer and Superintendent of Police with the help of police force began to do all sorts of manipulation, illegality and irregularity in counting to help the respondent. The Chief Minister of Bihar accompanied by a Cabinet Minister came to circuit House, Muzaffarpur and directed the Returning Officer to get the petitioner defeated and declare the respondent elected. At 84 booths appertaining to Kurhani assembly constituency segment hardly 200 to 300 ballot papers were put in ballot boxes but in course of a counting 700 to 800 ballot papers were found in the ballot boxes of the said 84 booths which led to the filing of petition by the election agent of the petitioner on 16-6-91 with a request not to count the ballot papers of the said booths and declare them void.

10. It has been further alleged by the petitioner of E. P. No. 5 of 1991 that at about 50 booths of Bochaha and Sakra Assembly constituency segments, including booth nos. 75, 110 and to 114 etc. of Bochaha Assembly constituency segment excess ballot papers were found at the time of counting than the votes said to have been polled. Petition was filed by the election agent of the petitioner as well as by Ram Baran Thakur for rejecting the ballot papers of such polling booths but their petitions were retracted and nothing was done and such void votes were counted in favour of respondent. Ballot papers of about 16 polling booths appertaining to Sakra, Minapur, Bochaha and Kurhani Assembly Constituency Segments did not bear the signature of the Presiding Officers but all such ballot papers bearing votes in favour of the respondent were counted in favour of the respondent and the petition filed by the election agent of the petitioner on 16-6-91 for rejecting such ballot papers was rejected. Different types of signatures of the Presiding Officer were found on the back of ballot papers of booth

no. 139 of Gaighat Assembly constituency segment but even then such ballot papers were counted and petition filed by the election agent of the petitioner not to count such ballot papers was rejected. Ballot papers of booth nos. 108 and 109 of Bochaha Assembly constituency segment did not bear either the distinguishing mark of booth or the signature of the Presiding Officers concerned but were counted in favour of respondent and no action was taken on the petition filed by the election agent of contesting candidate Kam Haran Thakur for rejecting such ballot papers. As per ballot paper account prepared by the Presiding Officer of booth no. 136 of Bochaha Assembly constituency segment 309 ballot papers had been put into the ballot boxes but at the time of counting only 446 ballot papers were found which were counted in favour of the respondent and no action was taken on the petition filed by Shri Kam Haran Thakur, one of the contesting candidates, for declaring the counting of ballot papers of the said booths illegal. A large number of ballot papers of congress (I) candidate (petitioner) were mixed with the ballot papers of the respondent and were counted in his favour. On various protests being lodged against such illegality and dishonesty on the part of counting staff the situation became alarming whereupon the Returning Officer called C.R.P.F. (Central Reserve Police Force) and ordered for assaulting the counting agents and contesting candidates as a result of which several persons, including one Ajit Kumar were injured. In the course of counting it was found that void votes in favour of respondent contained only initial of Presiding Officers and not their full signatures and even a large number of such ballot papers had not been detached from their counterfoils. Such void votes were counted in favour of the respondent inspite of objection by contesting candidates. All such counterfoils of concerned ballot papers which were not detached from main ballot papers were not bearing the signature of L.T.I. of votes rather bore only some ink spot. Excess ballot papers than polled votes even without number and not genuine were found at the time of counting of ballot papers of booths (detailed in para 43 of election petition) in Minapur Assembly constituency segment.

11. It has been further alleged by the petitioner in E. P. No. 5 of 1991 that at about 100 booths of Minapur, Bochaha Kurahani, Sakra and Gaighat Assembly constituency segments respondent procured exclusively in his favour more than 90 percent votes. Petitions praying for not counting such void votes were filed by Ram Baran Thakur and election agent of the petitioner but the Returning Officer counted such void votes. The Returning Officer counted ballot papers of booth no. 196 of Muzaffarpur Assembly segment where polling was more than 90.40 percent but in similar situation votes in favour of the petitioner at several booths, including some booths of Gaighat Assembly segment, were not counted on the ground of polling being above 90 percent even when there was no adverse report of Presiding Officers and other authorities. Against such discriminatory treatment and illegality done by the counting authorities, including Returning Officer, the petitioner filed a petition on 17-6-1991 for counting the votes. At booth No. 75 of Bochaha Assembly segment 378 votes had been polled majority of which were in favour of the petitioner but the same were not counted as the Presiding Officer of the said booth in collusion with the respondent had prepared wrong and misleading ballot paper account Part I mentioning therein that only 320 votes had been polled when, in fact, 378 votes had been polled. Similarly, the ballot papers of booth no. 165 of Bochaha Assembly Constituency segment were not counted on the false ground that 306 ballot papers were in excess. Valid ballot papers polled by genuine voters at booth Nos. 169 and 172 were not counted on the imaginary ground that the said booths were disturbed but there was no such report by Presiding Officers or petrolling magistrates. The Presiding Officer of booth no. 175 of Bochaha Assembly constituency segment had specifically reported in ballot paper account Part I that two ballot papers without serial numbers were put in ballot box by the voters and he (Presiding Officer) opened the ballot box and took out those two ballot papers from the ballot box and sent the same to the Returning Officer. Inspite of this illegality in polling the Returning Officer counted the ballot papers which were in favour of the respondent and did not reject the entire ballot papers of the said booth. At 26 booths (detailed in para 51 of the election petition) of Gaighat Assembly constituency segment the Presiding Officer, and polling parties as per direction of the Returning Officer put large number of ballot papers in ballot box after stamping them in favour of the respondent and in this way the respondent got 1453 void votes whereas the other contesting candidates could get 401 votes or got negative number of votes at the said 26 booths of Gaighat Assembly constituency segment. Attributing failure of such void votes was that ballot papers in thousands contained only initials of Presiding Officers and not their full signatures. Objections raised against counting of such votes were ignored by the Returning Officer.

12. Further case of petitioner in E.P. No. 5 of 1991 is that the respondent approached the Returning Officer several times prior to the date of poll and requested him for help so that he may win the election. Accordingly, the Returning Officer appointed Returning Officers as per the list furnished by the respondent and gave direction to these Presiding Officers specifically who were to conduct polling in the area where petitioner was popular and was to get majority of votes. Such Presiding Officers put some ballot papers in favour of the petitioner so that the polling percentage may go above 90 percent and the votes polled by genuine voters in favour of the petitioner may not be counted on the ground of polling percentage above 90%. This nefarious game trusted successfully and votes cast at various booths in different Assembly segments of the Parliamentary Constituency were not counted on account of polling above 90 per cent though the Presiding Officers of concerned booths (as detailed in para 52 of election petition) did not venture to make adverse report that votes were captured. On 17-6-91 in course of counting, petition was sent to Shri T. N. Sureshan, Chief Election Commissioner, New Delhi, as well as to Shri Satish Bhattacharya, Chief Electoral Officer, Bihar, Patna, regarding commission of illegality in counting of ballot papers. On the same date a petition was filed by the petitioner before the Returning Officer for recounting on the ground of miscounting of ballot papers details of which had been given in the petition and a copy thereof was sent to the Chief Election Commissioner, New Delhi, as well as to the Chief Electoral Officer, Bihar, Patna. Being disappointed of the attitude of the Returning Officer, the election agent of the petitioner sent urgent telegram to the Chief Election Commissioner, New Delhi, stating therein the commission of illegality and irregularity in counting of ballot papers and praying for ordering recount of ballot papers and withholding the announcement of final result sheet. Copy of the said telegram was also sent to the Chief Electoral Officer, Bihar, Patna. On 18-6-91 he (petitioner) sent a letter to the Election Commission, New Delhi, stating therein the illegalities and irregularities committed by the respondent by bringing the Returning Officer in his collusion and praying to declare the entire election, including polling, as void and ordering for repoll in entire constituency. On 28-6-91 a detailed petition was sent to the Chief Electoral Officer, Bihar, Patna stating therein various illegalities and irregularities committed in counting of ballot papers and praying for issuance of certified copy of some of the documents urgently as permissible under law. The Chief Electoral Officer, Bihar, sent wireless message to the Returning Officer for supply of urgent certified copy of certain documents. On 29-6-91 he (petitioner) filed a petition before the Returning Officer stating therein that he had applied for urgent certified copy of certain documents on 25-6-91 but the same has not been supplied inspite of wireless message sent by the Chief Electoral Officer, Bihar but no action was taken by the Returning Officer. Then on 30-6-1991 he (petitioner) again filed another petition before Chief Electoral Officer, Bihar, with a prayer to direct the Returning Officer to supply the certified copy. On receipt of the said petition the Chief Electoral Officer wrote a letter to the Commissioner, Tirhut Division, Muzaffarpur, directing him to take immediate step so that the petitioner may get certified copies without any further delay. The Returning Officer was so biased against him (petitioner) for helping so the respondent that he did not supply certified copies of certain documents which are permissible under law as he was engaged in making manipulations and fabrications in order to hide the illegalities committed in polling and counting of ballot papers. Inspite of all illegalities committed by Returning Officer, Presiding Officers, Polling Officers and other authorities, he (petitioner), in fact, has secured the majority of valid votes but on account of miscounting of the ballot papers, he has been defeated in the election in question. On the allegations aforesaid the election petitioner of E.P. No. 5 of 1991 has prayed for declaring the election of the respondent as void.

13. The sole respondent has filed written statement denying the allegations made in the election petition, and has contested these three election petitions. The case of the respondent is that these election petitions are not maintainable and are fit to be dismissed for non-compliance of mandatory provisions of sections 81, 82 and 117 of the Representation of the People Act. The allegations contained in election petitions are vague and are fit to be struck off under the provisions of Order 6 Rule 16 of the Code of Civil Procedure. The election petitions do not contain concise statements of material facts and as such are fit to be dismissed. The full particulars of the corrupt practices as alleged in E.P. No. 5 of 1991 have not been furnished in the schedule appended thereto and hence the election petition No. 5 of 1991 is fit to be dismissed on this ground alone. The copy served on him (respondent) is not the true copy of the election petitions presented before the Court and as such the election petitions are fit to be dismissed on this ground. The election of respondent is valid and he has been rightly and legally declared elected. Election petition Nos. 4 of 1991 and 6 of 1991 have been filed at the instance of Raghunath Pandey (petitioner in E.P. No. 5 of 1991), the defeated candidate, to harass the respondent. Prior to the election in question the respondent represented the constituency in question thrice i.e., in 1977, 1980 and 1989 and was also a minister in the Union cabinet in 1977 and 1989.

14. Further case of the respondent is that the Returning Officer rightly and legally rejected the nomination papers of Ashok Kumar (petitioner No. 2 in E.P. No. 4 of 1991) on 27-4-91 as the same were incomplete having defect of substantial character and the same being not in conformity with the provisions of section 33 of the Representation of the People Act, were not nomination papers in the eye of law. In the case of incomplete nomination papers the Returning Officer is not duty bound either to permit the candidate to complete it or to make roving and fishing enquiry. The incomplete nomination papers cannot be equated with inaccurate description of clerical or technical nature and hence the proviso to section 33(4) of the said Act will not be attracted. The nomination papers being incomplete, there was difficulty in identifying the candidate and the Returning Officer was not duty bound to ask the proposer or the candidate to point out the relevant entries in the electoral Roll or to give opportunity either to candidate or to the proposer to make the nomination paper complete. Apart from that, Ashok Kumar (petitioner No. 2 in E.P. No. 4 of 1991) was a contesting candidate in 1989 from Muzaffarpur Parliamentary constituency but he did not submit election expenses account within the stipulated period under section 77 and 78 of the Representation of the People Act as a result of which he was disqualified by the Election Commission under section 10(A) of the said Act for being chosen as and for being a member of either house of the Parliament or of the Legislative Assembly or of the Legislative council of a State for a period of 3 years from 7-4-1992.

15. Further case of the respondent is that it is incorrect to say that there was non-compliance of the mandatory provisions of clause 12(3) of the Election Symbol (Reservation and Allotment) Order, 1968. The symbol belt (Peti) was rightly allotted to the election petitioner Rajeshwar Thakur by the Returning Officer. From the notification (annexure A to E.P. No. 6 of 1991) it would be evident that the Box was not in the category of free symbols for the State of Bihar whereas belt is in the category of free symbols. The Returning Officer has no authority to go behind the notification issued by the Election Commission in the matter of allotment of symbol. Apart from the symbol, the name of the candidate is also printed in the ballot papers and that being so, it is incorrect and false to say that due to wrong allotment of symbol to petitioner Rajeshwar Thakur of E.P. No. 6 of 1991, the result of the election of the said petitioner has been materially affected. Petitioner Rajeshwar Thakur got only 16 votes in the election in question whereas the respondent got 320833 votes. Petitioner Rajeshwar Thakur had been taken up by Raghunath Pandey in the election in question for his own purpose and petitioner Rajeshwar Thakur had been allotted belt as his election symbol and hence there was no question of canvassing by him to cast vote in favour of box symbol. Petitioner Rajeshwar Thakur might have been under the wrong impression that peti means box whereas the fact is that peti means belt. It is incorrect to say that by allotment of the symbol belt (peti) the Returning Officer has de-

barred the majority of electorate of the constituency from expressing their will or verdict in favour of petitioner Rajeshwar Thakur. After submission of report by the Returning Officer, the Election Commission vacated the stay and then the result of the election was declared in accordance with law. Further case of the respondent is that the Returning Officer had taken all precaution for peaceful poll and the poll was free and fair. According to the respondent, E.P. No. 5 of 1991 is based on vague, wild, false, incorrect, fabricated and imaginary statements. The allegations have been denied in the written statement and prayer for rejection of the election petitions has been made.

16. On the pleadings of the parties issues for determination were framed separately in these three election petitions. Some of the issues are common in all the three election petitions. Since the three election petitions have been heard together, the issues have been recast. On recast, the following are the issues for determination :—

1. Whether the election petitions as framed are maintainable ?
2. Whether the nomination papers of Shri Ashok Kumar, petitioner no. 2 in E.P. No. 4 of 1991, had been improperly rejected and if so, whether the election of respondent George Fernandes is void ?
3. Whether the Returning Officer has violated the mandatory provisions of clause 12(3) (c) of the Election Symbol (Reservation and Allotment) Order, 1968, in deciding the allotment of symbols Lion, By-cycle and Car ?
4. Whether Shri Rajeshwar Thakur, petitioner in E.P. No. 6 of 1991, had been allotted symbol box but on the ballot paper belt was printed against his name and if so, whether it has materially affected the result of the election ?
5. Whether the respondent indulged in corrupt practice as alleged for getting him elected ?
6. Whether irregularities and irregularities were committed in counting of ballot papers and if so, whether it has materially affected the result of the election ?
7. Whether the election petitions are liable to be dismissed for non-compliance of the provisions of sections 81, 82 and 117 of the Representation of the People Act ?
8. Whether the allegations made in election petition No. 5 of 1991 suffer from vagueness and want of material facts and particulars ?
9. Whether the declaration of final result was in violation of the direction issued by the election Commission ?
10. To what relief, if any, are the election petitioners entitled ?

17. Issue No. 4.—It is the common case of the election petitioners in election petition No. 5 of 1991 and 6 of 1991 that Rajeshwar Thakur (election petitioner of E.P. No. 6 of 1991), one of the contesting independent candidates, in the relevant column of his nomination paper had indicated his choice of his symbols Bicycle, Lion and Car which were free symbols but the returning officer allotted Box as election symbol to Rajeshwar Thakur and Rajeshwar Thakur canvassed amongst the voters to cast votes on symbol Box allotted to him but on the day of poll the voters did not find box symbol against the name of Rajeshwar Thakur on the ballot paper as box had been printed as symbol against the name of Rajeshwar Thakur and hence did not vote for him though he was very popular amongst the illiterate, downtrodden, weaker and backward sections of society and had fair prospect of success in the election in question. It is also the common case of the election petitioners in election petition Nos. 5 and 6 of 1991 that wrong and illegal allotment of symbol to Rajeshwar Thakur had materially affected the result of the election in question as majority of votes which have gone in favour of sole respondent would have gone in favour of Rajeshwar Thakur. Rajeshwar Thakur has examined himself as P.W. 7

in support of his case to the aforesaid effect. He has stated in his examination-in-chief that though he had requested for allotment of Bi-cycle, Lion and Car as his election symbol by mentioning the same in his nomination paper but he was allotted belt as his election symbol. Subsequently he has stated that box was allotted as his election symbol. He has further stated that he had intimated the voters that box was his election symbol but in the ballot paper belt was shown as his election symbol against his name and due to that his voters were misled and he got only 16 votes. The evidence of P.W. 7 Rajeshwar Thakur to the aforesaid effect has been challenged in his cross-examination by the respondent. P.W. 9 Gauri Shanker Singh has been examined by the election petitioners to say that Rajeshwar Thakur had contacted him for vote in his favour and had told him that box was his election symbol but he did not find box symbol in the ballot paper and hence he cast his vote in favour of another candidate. It may be pointed out that P.W. 9 has himself admitted that belt had been shown as election symbol in the ballot paper against the name of Rajeshwar Thakur. When P.W. 9 found the name of Rajeshwar Thakur in the ballot paper there was no question of his being misled and he could have easily voted in favour of Rajeshwar Thakur if he so liked P.W. 10 Birendra Kumar Singh, P.W. 11 Rateneshwar Prasad Singh, P.W. 12 Sarju Tiwary, P.W. 13 Habibul Rahman @ Jinn, P.W. 14 Girish Kumar, P.W. 15 Devendra Sharma, P.W. 16 Rudradeo Thakur, P.W. 18 Kailash Prasad Sinha, P.W. 20 Yogendra Singh, P.W. 21 Raghunath Pandey, P.W. 24 Sachidanand Thakur and P.W. 38 Girjanandan Singh have been examined by the election petitioners to support their case to the effect though there was canvassing by or on behalf of Rajeshwar Thakur for casting vote in his election symbol box.

18. On the other hand the case of the respondent is that symbol belt (peti) had been allotted as election symbol to Rajeshwar Thakur by the Returning Officers and since box was not in the category of free symbols for the State of Bihar, there was no question of allotment of box as election symbol to Rajeshwar Thakur. It is also the case of the respondent that apart from the symbol the name of the candidate is also printed in the ballot papers and that being so, it is incorrect and false to say that due to wrong allotment of symbol to election petitioner Rajeshwar Thakur of E.P. No. 6 of 1991, the result of the election of the said petitioner has been materially affected. It is also the case of the respondent that Rajeshwar Thakur had been allotted belt as his election symbol and hence there was no question of canvassing by or on his behalf to cast vote in favour of symbol box or any voter getting misled or debarred from expressing his will in favour of Rajeshwar Thakur. Sri Hem Chand Sirohi, the Returning Officer, has been examined by the respondent as R.N. 21. He has stated in para 6 of his deposition that after withdrawal of nomination papers, election symbols were allotted to contesting candidates by him and the same were published in the prescribed proforma. He has further stated in para 7 of his deposition that Peti had been allotted as election symbol to Rajeshwar Thakur. In para 8 of his deposition the Returning Officer has denied the allegation that box had been allotted as election symbol to Rajeshwar Thakur but the same was subsequently changed and Peti was allotted as election symbol to him. R.W. 4 Ashok Bharti who had canvassed for Janta Dal candidate has been examined by the respondent to say that in the list of contesting candidates displayed on the board, belt had been shown as the election symbol of Rajeshwar Thakur and there was no canvassing on behalf of Rajeshwar Thakur. He has also denied that canvassing was done on behalf of Rajeshwar Thakur showing box as his election symbol.

19. It may be pointed out that list of symbols allotted to the contesting candidates has been brought on record as exhibit B for the respondent. In the list of symbols which is dated 29-4-91, the name of Rajeshwar Thakur is at serial No. 25. It would appear from the list that Peti had been allotted to Rajeshwar Thakur as his election symbol vide entry in column No. 5 of serial No. 25 in the list. This fact is not disputed. A notification dated 5-3-91 (exhibit C) of the Election Commission of India as published in Bihar Gazette dated 17-3-91 has been brought on record by the respondent for the purpose of showing that by this notification which has been issued in exercise of powers conferred by Clause (d) of sub-para (1) and sub-para (2) of paragraph

17 of the Election Symbols (Reservation and Allotment) Order 1968, the Election Commission allotted free symbols to the States and Union territory by amending table IV of the earlier notification dated 23-10-79. A perusal of the notification (Ext. C) shows that box had not been allotted to the State of Bihar as free symbol rather belt had been allotted as one of the free symbols. Undisputedly Rajeshwar Thakur had contested the election as an independent candidate and hence only free symbols allotted to the State of Bihar by the Election Commission of India could have been allotted to him. When box had not been allotted to the State of Bihar as free symbol for allotment to independent candidates, there was no question of allotting the same (box) to Rajeshwar Thakur (petitioner in E.P. No. 6 of 1991) as election symbol. It was not disputed that Peti also means belt. Since belt had been allotted to the State of Bihar as a free symbol, Peti allotted to Rajeshwar Thakur meant belt and not box. There appears substance in the contention of the learned counsel for the respondent that election petitioner Rajeshwar Thakur might have been under the wrong impression that Peti means box whereas the fact is that Peti means belt. In view of exhibits B and C mentioned above the evidence of the aforesaid P.Ws that box had been allotted as election symbol to Rajeshwar Thakur and canvassing had been made on his behalf saying that box was his election symbol and vote should be cast therein does not inspire confidence and it is difficult to accept the same. When box had not been allotted as election symbol to Rajeshwar Thakur, there was no question of the voter getting misled by printing of belt as election symbol against his name in the ballot paper and the result of the election getting materially affected thereby. Issue no. 4 is disposed of accordingly and is answered in negative.

20. Issue No. 3 :—It is the common case of the election petitioners in Election Petition nos. 5 and 6 of 1991 that Rajeshwar Thakur (election petitioner in E.P. No. 6 of 1991), one of the contesting independent candidates, in the relevant column of his nomination papers indicated his choice of symbol as bi-cycle, Lion and Car which were free symbols and four more independent candidates, namely, Bindeshwar Singh, Md. Ismail, Bano Rai and Bindeshwar Rai were claimants of election symbol Lion. It is also their case that there were more than one claimants for bi-cycle and Car as their election symbol and under the circumstances it was the duty of the Returning Officer to decide allotment of symbols Bi-cycle, Lion and Car by lot in accordance with the mandatory provision of clause 12(3) (c) of the Election Symbol (Reservation and Allotment) Order, 1968 but he did not do so rather allotted Bi-cycle symbol to Ram Shersha Mishra and Car symbol to Amit Kumar and did not allot Lion symbol to anyone and thereby violated the mandatory provisions of clause 12(3)(c) of the Election Symbol (Reservation and Allotment) Order, 1968.

21. It is not disputed that Rajeshwar Thakur had contested the election in question as an independent candidate. It is also not disputed that in his nomination papers Rajeshwar Thakur had shown his preference for Bi-cycle, Lion and Car as his election symbol. Moreover, this fact is also apparent from the evidence of Rajeshwar Thakur (P.W. 7) and exhibits 2/D to 2/G which are nomination papers of Rajeshwar Thakur. Election petitioners have also brought on record nomination papers of Ram Baran Thakur (petitioner no. 1 in E.P. no. 4 of 91) as exhibits 2/B to 2/C for the purpose of showing that Ram Baran Thakur, an independent candidate had shown his preference for symbol Bi-cycle in his nomination papers. So Bi-cycle was common in the election symbols selected by Rajeshwar Thakur and Ram Baran Thakur. The Returning Officer Sri Hem Chand Sirohi (R.W. 21) in para 37 of his deposition had admitted that Rajeshwar Thakur in his nomination papers had indicated his preference for three symbols, namely, Bi-cycle, Lion and Car. In para 38 of his deposition The Returning Officer has further stated that preference for Bi-cycle and Car symbols had been given by more than one candidates. It is not disputed that Bi-cycle and Car were free symbols specified by the Election Commission of India for allotment in the State of Bihar to independent candidates. Moreover this fact is also apparent from exhibit C. Clause 12(3)(c) of the Election Symbols (Reservation and Allotment) Orders, 1968 provides that where the same free symbol has been chosen by several independent candidates at such election then the Returning Officer shall decide

by lot to which of the independent candidate that free symbol shall be allotted and allot that free symbol to the candidate on whom the lot falls and to no one else. In para 38 of his deposition the Returning Officer (R.W. 21) has stated that preference for Bi-cycle and Car symbols had been given by more than one candidates and he had allotted certain election symbols by lot but he did not remember if the aforesaid two symbols, namely, Bi-cycle and Car had been allotted by lot or not. As is apparent there is no specific evidence of the Returning Officer (R.W. 21) that free symbols Bi-cycle and Car which had been claimed by more than one candidates had been allotted by lot as required by clause 12(3)(c) of the aforesaid Election Symbols (Reservation and Allotment) Orders, 1968. The order sheet maintained by the Returning Officer has been brought on record as exhibit-9. Even in the said order-sheet there appears nothing to show that the Returning Officer had allotted free symbols Bi-cycle and Car by lot. It is the specific case of the election petitioners in Election Petition nos. 5 and 6 of 1991 that Bi-cycle symbol had been allotted to independent candidate Ram Shersha Mishra and Car symbol had been allotted to independent candidate Amitab Kumar without lot and Lion symbol had not been allotted to anyone. As pointed out above there appears nothing either in the evidence of the Returning Officer (R.W. 21) or in the ordersheet (Ext. 9) maintained by him to show that the allotment of free symbols Bi-cycle and Car had been made by lot. Under the circumstances it becomes apparent that the Returning Officer violated the provisions of clause 12(3)(c) of the Election Symbols (Reservation and Allotment) Orders, 1968 in deciding the allotment of symbols Bi-cycle and Car. Issue no. 3 is disposed of accordingly.

22. Issue no. 2 :—It is not disputed that Devendra Singh and Manoj Kumar Jha were the proposers of Sri Ashok Kumar (petition no. 2 in F.P. No. 4 of 1991). Moreover, this fact is also apparent from the evidence of P.W. 1 Ashok Kumar and the nomination papers dated 26-4-91 (Exts. 2 and 2/A) of Ashok Kumar. It has come in the evidence of P.W. 1 Ashok Kumar that name of proposer Devendra Singh is at serial no. 117 of Part no. 55 of the voter list (Ext. 1) of Bhochaha Assembly Constituency which forms part of Muzaffarpur Parliamentary Constituency. It has also come in the evidence of P.W. 1 Ashok Kumar that the name of his other proposer Manoj Kumar Jha is at serial no. 520 of Part no. 56 of the voter list of Bhochaha Assembly Constituency. Moreover these facts are also apparent from the voter list (Ext. 1) of Bhochaha Assembly Constituency. From the nomination papers (Ext. 2) of Ashok Kumar, it would appear that in the said nomination papers it has been stated that name of proposer Devendra Singh is in part no. 117 of the voter list of Bhochaha Assembly Constituency. So serial no. 117 has been wrongly written as part no. 117 in the nomination paper (Ext. 2) and part no. 55 of the voter list has not been stated therein. From the other nomination papers (Ext. 2/A) of Ashok Kumar it would appear that in the said nomination paper it has been stated that the name of proposer Manoj Kumar Jha is entered at serial no. 520 of the voter list of Bhochaha Assembly Constituency but the part number of the voter list in which the name of proposer Manoj Kumar Jha has been entered has not been mentioned in the said nomination paper.

23. Referring to sub-section 4 of section 36 of the Representation of the People Act, 1951 it was contended on behalf of the respondent that the above mentioned defects in the nomination papers of Ashok Kumar were of substantial character and hence could not have been ignored or over looked in accordance with the proviso to sub-section 4 of section 33 of the said Act. It was further contended that due to the above mentioned defects in the nomination papers of Ashok Kumar their proposers were not identifiable from the voter list and under the circumstances the Returning Officer had no option but to reject the nomination papers. In support of the above contention reliance was placed on the decision of the Supreme Court in the case of Brij Mohan vs. Saipal reported in 1985 S.C. 847. On the other hand the learned counsel for the election petitioners contended that the above mentioned defects in the nomination papers of Ashok Kumar are of the nature of clerical error and not of substantial character entailing rejections of nomination papers and since the electoral rolls of all the assembly constituencies forming part of the Muzaffarpur Parliamentary Constituency were before the Returning Officer at the time of scrutiny, real and correct

entry in the electoral roll could be easily pointed out on an enquiry and on being given opportunity. It was further contended that section 33(4) of the Representation of People Act, 1951 particularly its proviso clearly indicates that misdescription regarding the electoral roll in the nomination papers is a technical or clerical error and as such a duty has been cast on the Returning Officer either to get it corrected by candidate at the time of presentation of the nomination papers or to get it over looked or ignore at the time of scrutiny. It was further contended on behalf of the election petitioners that undisputedly no one had objected to the nomination papers of Ashok Kumar before the Returning Officer at the time of scrutiny and in view of the provision of section 33(4) read with section 36(2) of the said Act the Returning Officers could have held summary enquiry and should have been reasonable opportunity to the concerned candidate to point out the correct entry in the electoral roll in respect of the names of the proposers but no enquiry as required by law was held by the Returning Officer before rejecting the nomination papers of Ashok Kumar.

24. In view of the above contentions of the learned counsel for the parties it has to be as considered if the aforesaid defects in the nomination papers of Ashok Kumar were of the nature of clerical error or were of substantial character and whether the Returning Officer had held summary enquiry as required by section 36(2) of the Representation of People Act prior to passing of the order of rejection.

25. It is not disputed that Ashok Kumar was registered as voter in the Assembly Constituency as mentioned in his nomination papers and was qualified to contest the election in question. Moreover this fact is also apparent from the voter list (Ext. 1). It is also not disputed that Devendra Singh and Manoj Kumar Jha, were registered as voters in the Assembly Constituency as mentioned in the concerned nomination papers (Ext. 2 and 2/A) and were qualified to propose the qualified candidate of their choice. In the nomination papers serial no. and part no. of the electoral roll of the constituency concerned relating to a candidate and the proposer are required to be given in order to enable the Returning Officer to verify whether the candidate and the proposers are registered as electoral and qualified to be nominated as a candidate for filling a seat in the Legislative Assembly/Lok Sabha. Rule 2(f) of the Conduct of Election Rules, 1961 says that "electoral roll No." of a person means :—

- (i) The serial number of the entry in the electoral roll in respect of that person.
- (ii) The serial number of the part of the electoral roll in which such entry occurs.
- (iii) The name of the constituency to which the electoral roll relates.

These particulars have to be furnished in the nomination papers. As mentioned above in the nomination paper bearing exhibit No. 2 the serial number of the entry in the electoral roll in respect of "proposer Devendra Singh has not been mentioned and part number has been mentioned as 117 which is wrong, whereas in the other nomination paper (Ext. 2/A) of Ashok Kumar the serial number of the entry in the electoral roll in respect of proposer Manoj Kumar Jha has been rightly mentioned as 520 but the part number has not been given. In AIR, 1985 S.C. 847 referred to by the learned counsel for the respondent it has been held by the Supreme Court that "it is not possible to say generally and in the numbers of the all errors in regard to electoral roll numbers of the candidate and the proposer in the electoral rolls or nomination papers do not constitute defect of a substantial character. They would not be defects of a substantial character only if at the time of scrutiny the Returning Officer either by himself

with the materials placed before him during scrutiny or with the assistance of the candidate or his proposer or any other person is able to find out the correct serial number of the candidate and the proposer by reference to the correct part number of the electoral roll. It had been further held by the Supreme Court in the said case that "the candidate and the proposer are always expected to go fully prepared to meet any objection that may be raised by any candidate or even by the Returning Officer himself *su moto* at the time of scrutiny and they cannot be expected to go any scheme less prepared merely because the Returning Officer had received the nomination papers without raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed as consideration at the hands of the Returning Officer against whom there is no estoppel with regard to statutory duty of scrutiny."

26. It has come in the evidence of P.W. 1 Ashok Kumar and P.W. 3 Jamil Ahmad that Ashok Kumar and his proposers were present at the time of scrutiny of nomination papers but the Returning Officer rejected the same without giving an opportunity for hearing. It has also come in the evidence of P.Ws. 1 and 3 that neither any candidate nor any proposer had raised any objection against the nomination papers of Ashok Kumar. P. W.1 Ashok Kumar has further stated that he would have easily pointed out his name and that of his proposers in the voter list kept at the table of the Returning Officer at the time of scrutiny, had an opportunity been given to him by the Returning Officer. The evidence of P.Ws. 1 and 3 to the aforesaid effect has not been challenged in their cross-examination. P.W. 2 Ram Baran Thakur, P.W. 4 Sudish Narayan Thakur, P.W. 5 Amitab Kumar, P.W. 6 Shambhu Sah and P.W. 21 Baghunath Pandey have in their evidence supported the evidence of P.Ws. 1 and 3 to the aforesaid effect. It would not be out of place to mention here that it has been suggested in the cross-examination of P.W. 2 Ram Baran Thakur, P.W. 4 Sudish Narayan Thakur, P.W. 5 Amitab Kumar that Ashok Kumar and his proposers did not make any request for hearing before rejection of nomination papers. But suggestion to this effect has been denied by the said P.Ws. By giving the aforesaid suggestion it has been admitted had, in respondent that no opportunity of hearing had, in fact, been given to Ashok Kumar and his proposers prior to rejection of the nomination papers of Ashok Kumar.

27. As against the above evidence of P.W. 1 and others, the respondent has examined P.W. 9 Narendra to say that the Returning Officer after scrutiny of the nomination papers rejected the nomination papers of two candidates but neither the candidates nor any one else on their behalf requested for an opportunity of hearing regarding rejection of nomination papers nor objected to rejection thereof. Similar is the evidence of R. W. 16 Bindeshwar Sahani. It may be pointed out that the Returning Officer as R.W. 21 has stated in para 3 of his deposition that on the date of scrutiny the nomination papers which were found to be in order were accepted and those found to be defective were

rejected and reason for rejection had been assigned. In Para 5 of his deposition, he has stated that neither Ashok Kumar nor his proposers objected to the rejection of nomination papers of Ashok Kumar. In para 33 of his deposition the Returning Officer has categorically admitted that no summary enquiry had been held by him prior to rejection of the nomination papers of Ashok Kumar on the ground that the same were incomplete in certain particulars. Of course in para 34 of his deposition he has tried to retract from the above statement of his in para 33 of his deposition by stating that prior to rejection of nomination papers the candidates concerned had been given an opportunity for hearing but this statement on his part appears to be an after thought as the ordersheet (Ext. 9) maintained by him in this regard does not indicate that any summary enquiry had been held by the Returning Officer prior to rejection of the nomination papers and an opportunity of hearing had been given to Ashok Kumar prior to rejection of his nomination papers. In para 35 of his deposition the Returning Officer has admitted that the ordersheet (Ext. 9) maintained by him does not say that Ashok Kumar had been given an opportunity of hearing prior to rejection of his nomination papers.

28. It may be further pointed out that the Returning Officer (R. W. 21) in his examination-in-chief (para 2) has stated that at the time of presentation of nomination papers the nomination papers were checked with reference to the voter list in presence of the candidates concerned. But in his cross-examination (para 31) he has admitted that there is no document to show that nomination papers were checked by him with reference to voter list in the presence of the candidate concerned. In para 32 of his deposition has been further admitted that there is no document to show that at the time of presentation of nomination papers the defects, if any, found therein were pointed out to the candidates concerned for rectification thereof. The Returning Officer in para 32 of his deposition has further admitted that he was aware of the provisions that if any clerical or printing is defect pertaining to the serial number or part number of the candidates or his proposers was detected, the same was to be pointed out to the candidate for rectification of the same but there is no document to show that at the time of presentation of nomination papers defects, if any, found were pointed out to the candidates concerned for rectification thereof. The order sheet (Ext. 9) maintained by the Returning Officer also does not show that the Returning Officer checked the nomination papers with reference to the voter list at the time of presentation of nomination papers as required by section 33(4) of the Representation of People Act with a view to satisfy himself that the names and electoral roll numbers of the candidates and to proposers as entered in the nomination papers are the same as those entered in the electoral roll. It appears that the Returning Officer did not comply with the provisions of section 33 (4) of the Representation of People Act. Had the Returning Officer acted in accordance with the provisions of section 33(4) of the Representation of People Act he must have noticed that something was wanting in the nomination papers filed by Ashok Kumar and then he must have

pointed out the same to Ashok Kumar and his proposers at the time of presentation of the nomination papers. However, I would like to point out that the enquiry at the stage of receipt of nomination papers is a peripheral one and no legal consequence flows from the omission on the part of the Returning Officer to carry out his responsibility at the stage of receipt of the nomination paper due to any reason.

29. The nomination papers of Ashok Kumar had been brought on record by the election petitioners as exhibits 2 and 2/A. The order of rejection passed by the Returning Officer on the nomination papers shows that both the nomination papers were rejected on the ground that they were incomplete. As will appear there is nothing in the orders passed on the nomination papers to show that the Returning Officer had held summary enquiry and had given opportunity to Ashok Kumar and his proposers to assist him in locating and identifying the names of the proposers in the voter list prior to passing the order rejecting the nomination papers. In the orders there is nothing to show that the Returning Officer prior to rejection of the nomination papers enquired from Ashok Kumar or his proposers and the persons present there if they had anything to say and no one had objected to the rejection. The ordersheet (Ext. 9) maintained by the Returning Officer in this regard contains orders dated 19-4-91 to 29-4-91. It shows that nomination papers were scrutinised on 27-4-91 and at the time of scrutiny no one had raised objection against the nomination papers of Ashok Kumar but the same were rejected on the ground that they were defective (not incomplete as mentioned in the order of Returning Officer on nomination papers). There is nothing in the order dated 27-4-91 to show that Ashok Kumar or his proposers were asked to hold the Returning Officer in locating the names of the proposers in the voter list or any summary enquiry as required by section 36(2) of the Representation of People Act.

30. In view of the evidence discussed above, I am of the opinion that there was no summary enquiry as required by law by the Returning Officer prior to rejection of nomination papers of Ashok Kumar. Since there was no summary enquiry as required by law at the time of scrutiny it cannot be said that the Returning Officer could not have been able to find out the correct serial number of proposer Devendra Singh and part number of proposer Manoj Kumar Jha with the assistance of Ashok Kumar or his proposers or other person present there at the time of scrutiny. It is true that the candidates and their proposers are always expected to go fully prepared to meet any objection at the time of scrutiny but unless the Returning Officer holds summary enquiry as required by law and gives time/opportunity to the candidate and the proposers concerned their preparation to meet any objection will not be of any help. It was contended on behalf of the respondent that Ashok Kumar (P.W. 1) has claimed that he and his proposers were present at the time of scrutiny but the evidence on record does not show that they had sought be for time/opportunity to give correct particulars of the

proposer or to assist the Returning Officer in locating or identifying the proposers in the voter list. In this connection it was rightly contended on behalf of the election petitioners that when the Returning Officer did not hold summary enquiry prior to rejection of the nomination papers, Ashok Kumar and his proposers could not get opportunity to assist the Returning in locating and identifying the correct serial number/part number of the proposers in the voter list. In view of this it is difficult to say that the defects in the nomination papers of Ashok Kumar were of substantial character.

31. The learned counsel for the election petitioners referred to pages 26 and 27 of the Hand Book for Returning Officer (Published in 1977) at which grounds which are insufficient for rejection of nomination papers have been detailed and pointed that rejection of nomination papers on the ground of any error in description of electoral roll number has been described as flimsy ground. The learned counsel for the election petitioners further pointed out that just above the "Grounds for Rejection of Nomination Paper" at page 27 of the said Hand Book the instruction/direction of the Election Commission is for not rejecting any nomination paper on the ground of technical or clerical errors or discrepancies most of which could or should have been directed to be set right at the time of presentation of nomination paper [vide section 33(4) proviso]. Further instruction/direction is that "it would be very improper if you (Returning Officer) fail at the proper stage to help a candidate by exercising your powers and discretion under the proviso to section 33(4) and if, later at the time of scrutiny you reject his nomination paper on the ground of those very defects which could have been set right under that section". It was not disputed that the instruction/direction/guideline as contained in the aforesaid Hand Book are binding on the Returning Officer though the same have no statutory force. As is apparent, the Returning Officer while rejecting the nomination papers of Ashok Kumar ignored the instruction/direction as contained in the aforesaid Hand Book for Returning Officer.

32. The learned counsel for the election petitioners referred to the proviso to section 36(5) of the Representation of People Act which provides that in case an objection is raised by the Returning Officer or is made by any other person the candidate concerned may be allowed time to rebut and contended that granting of time to rebut objection is a must even if not asked for, but the Returning Officer instead of doing so rejected the nomination papers out right without holding summary enquiry. In support of this contention reliance was placed on para 8 of the decision of this very Court in the case of Parmeshwar Kumar vs. Lahtan Choudhary reported in 1958 B.L.J.R. 386. In para 8 of the said decision it has been inter alia, held that "under proviso to section 36(5) of the Representation of People Act the Returning Officer could have allowed time to the candidate concerned to rebut the objection raised by or on behalf of the respondent to the nomination of the petitioner even though time was not asked or is as nobody was present on behalf of the petitioner at the time of scrutiny and at the time objections were raised. I am of the view that where

objections are raised to any nomination paper which require an investigation of summary enquiry of certain facts it would have been proper for the Returning Officer to adjourn the hearing of the objection for some time or for a day." In this connection the learned counsel for the respondent pointed out that in the said case objection was that the nomination filed by the petitioner did not bear any genuine signature of the respective proposer which is not the case in the instant case before this Court and in that view of the matter that case is clearly distinguishable from the present case. It was further contended by the learned counsel for the respondent that summary enquiry under section 36(2) of the Representation of People Act is not mandatory and in the instant case the proviso to section 36(5) is not attracted because there is nothing to rebut as the column meant for serial number/part number was blank since the date of presentation of nomination papers. It was further contended by the learned counsel for the respondent that in case of incomplete nomination paper the Returning Officer was not duty bound to ask the proposer or the candidate to point out the relevant entry in the electoral roll and the incomplete nomination paper is not nomination paper in the eye of law and that being so, there was no question of giving any opportunity either to the candidate or to his proposers.

33. In this connection the learned counsel for the election petitioners referred to section 33(4) and its proviso and Section 36 of the Representation of People Act and pointed out that they do not make any distinction between wrongly filling a column of the nomination paper and leaving the same blank. The learned counsel for the petitioners contended that omission of mentioning part number/serial number of proposer is flimsy, unsubstantial, technical and clerical error and rejection of nomination papers on the ground of omission is improper and will render the election of returned candidate void. It was further contended that the Returning Officer is not exonerated from discharging his own duty, including giving an opportunity to the candidate/proposer before rejecting nomination paper. In support of the above contentions the learned counsel referred to the decision of the Supreme Court reported in 10 E.L.R. 189 (Karnail Singh vrs. Election Tribunal Hissar and others) and pointed out that a constitution Bench of the Supreme Court consisting of Five Judges have held in the said case that omission to mention the part number (sub-division) of the candidate in proper column of the nomination paper is only a defect of technical and not of substantial character and accordingly affirmed the decision of the Tribunal that the rejection of nomination paper was improper and the election of the elected candidate was void. The learned counsel further referred to the decision of the Election Tribunal Jaipur reported in 6 E.L.R. 224 (Ram Singh vrs. Hazarilal and others) and pointed out that it was held by the Election Tribunal that omission to mention the part number of the voter list regarding the name of the candidate in the relevant column of nomination papers is not fatal defect in the nomination paper and the rejection of the nomination paper in such circumstance was improper. It was further pointed out that Election Tribunal has also laid stress that omission

to mention the part number of electoral roll in the nomination paper can be easily clarified by holding a summary enquiry by the Returning Officer. The learned counsel for the election petitioners further referred to the decisions reported in 6 E.L.R. 346 (Sheo Dayal and others vrs. Tej Ram and others), 1 E.L.R. 252 (Tika Ram Sharma vrs. Lalit Bahadur Kharag and others), 3 E.L.R. 375 (Banket Lal vrs. Madan Mohan and others), 4 E.L.R. 306 (Surat Singh vrs. Jag Bahadur Singh and others), 5 E.L.R. 173 (Ram Krishna Reddy vrs. Kamla Devi), Indian Election cases 1935—1951 (Sen and Poddar) page 10 (Gurubox Singh vrs. Baldeo Singh and others) and Indian Election Cases 1935—1951 (Sen and Poddar) page 66 (E. Fiew vrs. G. E. Gibbon and others). The learned counsel for the election petitioners also referred to the decision of the Supreme Court reported in A.I.R. 1984 S.C. 856 in support of his contention that proviso to Section 33(4) of the Representation of People Act is obligatory and not directly.

34. Section 35 of the Representation of People Act inter alia provides for affixing notice in some conspicuous place in the office of the Returning Officer with regard to nomination and time and place for their scrutiny. Rule 7 of Conduct of Election Rule, 1961 provides that notice of nomination under Section 35 of the Act shall be in such one of the forms 3-A to 3-C as may be appropriate. Relevant form for election to Lok Sabha is 3-A. It was contended on behalf of respondent that there is no pleading to the effect that notice in form 3-A had not been affixed and hence presumption could be that official work must have been done in due course. It was further contended on behalf of the respondent that in view of the notice in form 3-A the candidates and the proposers are expected to go fully prepared on the day of scrutiny to meet any objection that may be raised at the time of scrutiny. It was not disputed by the learned counsel for the petitioners that in view of notice in form 3-A the candidates and their proposers are expected to go prepared to meet any objection that may be raised at the time of scrutiny but it was pointed out that there is nothing in the ordersheet (Ext. 9) of the Returning Officer to show that notice in form 3-A had, in fact, been affixed. It was further contended that Ashok Kumar and his proposers were undisputedly present at the time of scrutiny but in absence of summary enquiry by the Returning Officer they could not get an opportunity to assist him in locating and identifying the proposers in the voter list. By referring to the oral evidence adduced by the parties, order passed by the Returning Officer on the nomination papers of Ashok Kumar and the ordersheet (Ext. 9) of the Returning Officer it has already been pointed out earlier that there was no summary enquiry by the Returning Officer prior to passing of the order for rejection.

35. The learned counsel for the respondent invited my attention to certain other decisions to which I will refer hereafter. I have already referred to the decision of the Supreme Court in the case of Brij Mohal vrs. Satpal reported in A.I.R. 1985 S.C. 847. In that case the candidate who was present before the Returning Officer was asked to point out the entry in the electoral roll where the names of himself

and his proposers are found as electors and as he was not in a position to do so the Returning Officer rejected the nomination paper and hence the defects concerning electoral roll numbers were held to be defects of substantial character and the rejection was held to be justified. But in the instant case the Returning Officer did not ask the candidate Ashok Kumar and his proposers present there to point out the entries in the electoral roll where the names of the proposers are entered as electors. So the decision in the above mentioned case is not applicable to the facts of the instant case.

36. In A.I.R. 1985 1073 (Lila Krishna vrs. Mani Ram Godra and others) referred to by the learned counsel for the respondent, no one was available when the Returning Officer took up the nomination papers of Mani Ram Chapala and Raj Tilak (two of the candidates) to indicate to the Returning Officer correct serial number in the electoral roll and under the circumstances the nomination papers of the aforesaid two candidates were rejected and the defect was held to be of substantial character and the rejection was held to be proper by the Supreme Court. In the instant case before me the candidate as well as his proposers were available at the time of scrutiny but they were not asked by the Returning Officer to indicate the correct serial number/part number of the proposers and hence the decision in the said case is not applicable to the fact of the instant case.

37. From the above discussions it is apparent that the defects in the nomination papers of Ashok Kumar were not of substantial character and the nomination papers having been rejected by the Returning Officer without holding summary enquiry as required by Section 36(2) of the Representation of People Act, 1951 and without giving an opportunity of hearing to Ashok Kumar and his proposers, rejection was improper and illegal. By rejecting nomination papers illegally and improperly the Returning Officer deprived the entire electors of the Parliamentary constituency, in question, of their substantial right to elect person of their choice and has thereby made the election of the respondent void. Issue No. 2 is disposed of accordingly.

Issue No. 7—Section 81 of the Representation of People Act provides that an election petition calling in question any election may be presented at one or more of the grounds specified in sub-section 1 of Section 100 and Section 101 to the High Court by any candidate of such election or any elector within 45 days from but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their elections are different, the later of those two dates. It further provides that every election petition shall be accompanied by as many copies thereof as there are respondent mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition. All the three election petition under consideration are for declaring the election of sole respondent as void. The election petitioners in the three election petitions were candidates/electors in the election in question. It was not disputed that the election petitions have been presented before the High Court within time on one or more of the grounds

specified in sub-section 1 of Section 100 of the Representation of People Act and were accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy had been duly attested by the petitioners under their own signature to be true copy of the petition. In view of this it cannot be said that there was non-compliance of the provisions of section 81 of the Representation of the People Act.

39. Section 82 of the Representation of the People Act provides that an election petitioner shall join as respondents to his petition where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates and any other candidate against whom allegations of any corrupt practice are made in the petition. It may be pointed out that the election petitioners in these election petitions have simply sought declaration of the election of the sole respondent as void on the grounds mentioned in their respective election petitions and have not sought for any further declaration that any other candidate has been duly elected and hence they have impleaded only the returned candidate as the sole respondent in the election petition. That being so, there appears no merit in the plea that there was no compliance of the provisions of section 82 of the Representation of the People Act.

40. Section 117 of the Representation of the People Act provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition and during the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct. It was not disputed that the election petitioners had deposited a sum of two thousand rupees as security for the costs of each of the three election petition under consideration. Moreover, this fact is also apparent from the record of the election petitions concerned. In view of this it cannot be said that there was non-compliance of provisions of section 117 of the Representation of the People Act. Accordingly, this issue is answered in the negative.

41. Issue No. 5.—As will appear from election petition no. 5 of 1991 only one corrupt practice, namely, soliciting the help and assistance of different types from the Returning Officer by the respondent for success in his election from the date of filing of his nomination paper onwards has been alleged. The first such help was allegedly sought by the respondent from the Returning Officer on 25-4-91 at the time of presentation of nomination paper. In support of this allegation the election petitioners have examined P.W. 27 Birendra Prasad. He has stated in his examination-in-chief (para 1) that on 25th April, 1991 at about 10 to 10.30 A.M. he accompanied by Azarul Haque (P.W. 32) had been to the chamber of District Magistrate, Muzaffarpur in search of Sarda

Mal (R.W. 30) and at that very time Sri George Farnandis (respondent) came there and requested the District Magistrate for help saying that Congress Party had set up a tuff candidate and the District Magistrate (Returning Officer) assured him not to worry. The evidence of P.W. 32 Anzarul Haque is also like that of P.W. 27.

42. It may be pointed out that the evidence of P.W. 27 and 32 to the aforesaid effect has been challenged in their cross-examination. It would not be out of place to mention here that the evidence of respondent George Farnandis (R.W. 29) in para 4 of his deposition shows that he had presented his nomination paper in between 2.45 P.M. and 3.00 P.M. and had reached Muzaffarpur a little before the presentation of nomination paper and had drove straight to the office of the Returning Officer. When Sri Farnandis had presented his nomination paper in between 2.45 P.M. to 3.00 P.M. there was no question of his seeking help from the Returning Officer in between 10 to 10.30 A.M. as stated by P.Ws. 27 and 32 examined by the election petitioner. Sri Farnandis (R.W. 29) in para 5 of his deposition has denied that he sought help of the Returning Officer saying that the Congress Party had set up a very tuff candidate and the District Magistrate (Returning Officer) assured him not to worry about the congress candidate. In para 6 of his deposition Sri Farnandis (R.W. 29) has further denied that the District Magistrate-cum-Returning Officer had helped him. R.W. 21 Hem Chand Shirohi who is the Returning Officer himself has also in para 15 of his deposition denied that Sri Farnandis had requested him for help in the election and that he assured him not to worry. It was rightly contended on behalf of the respondent that evidence of P.Ws. 27 and 32 to the aforesaid effect seems to be absurd as neither a contesting candidate would seek help of Returning Officer publically for success in the election nor the Returning Officer would publically give assurance for such help. In view of what has been pointed out above, the allegation that the respondent sought help of the Returning Officer at the time of presentation of nomination paper and the Returning Officer assured him of help in the election does not appear to have any merit and the hence the same can hardly be accepted.

43. It has been alleged by the election petitioner in E.P. No. 5/91 that after presenting his nomination paper the respondent addressed a meeting of his supporters in Collectorate compound at Muzaffarpur and the Returning Officer allowed the meeting of the supporters by respondent on the day of presentation fact that the respondent had addressed his supporters who had gathered in Collectorate compound at Muzaffarpur after presenting his nomination paper has been admitted by him in para 11 of his deposition as R.W. 29. This fact has also been admitted by R.W. 32 Maheshwar Prasad Yadav, R.W. 9, R.W. 14, R.W. 28 and R.W. 34 Brij Bihari Prasad in their evidence in Court. R.W. 34 Brij Bihari Prasad has also denied that he had also addressed the supporters in Collectorate campus and had talked of blood bath in the election. In this connection it was pointed out by the learned counsel for the respondent that there is

nothing on record to show that there was any ban on addressing supporters on 25-4-91 by a candidate in or near about the Collectorate campus. No paper from the side of the election petitioner has been brought on record to show that addressing of the supporters by respondent on the day of presentations of nomination paper in or near about the Collectorate campus was in violation of any ban and the Returning Officer by not interfering with the meeting addressed by Sri Farnandis had helped him. That being so, it is difficult to accept the allegation that addressing the supporters by Sri Farnandis after the presentation of the nomination paper in the collectorate campus amounted to a corrupt practice.

44. The other allegation with regard to corrupt practice is that the collectorate office at Muzaffarpur was used as strong room for keeping the ballot boxes and the collectorate campus was used for counting of ballot papers in the elections held earlier but the venue for keeping of ballot boxes and for counting of ballot papers was changed and Sikandarpur stadium situated on the bank of river Gandak and at a lonely place was used for the purpose. In support of this allegation the election petitioners have examined P.W. 10 Birendra Kumar Singh, P.W. 11 Rateneshwar Prasad Singh, P.W. 12 Sarju Tiwary, R.W. 13 Habibul Rahman @ Jina, P.W. 18 Kailash Prasad Sinha, R.W. 20 Yogendra Singh, P.W. 21 Raghunath Pandey and P.W. 53 Ram Kumar Singh who have supported the allegation to the aforesaid effect. The fact that in the earlier elections collectorate office and campus at Muzaffarpur was used as strong room for the purpose of keeping ballot boxes containing ballot papers and for the purpose of counting of ballot paper has not been disputed by the respondent. It is also not disputed to that Sikandarpur stadium was used as strong room for the purpose of keeping ballot boxes containing ballot papers of the election, in question and for the purpose of counting of ballot papers rather R.W. 3 Ram Pukar Singh, R.W. 4 Ashok Bharti, P.W. 5 Jitendra Prasad Singh, R.W. 14 Jagdish Desh Pandey, R.W. 21 Hem Chander Shirohi, P.W. 27 Prem Chand Verma, R.W. 30 Sarda Mal and R.W. 31 Ja'nandan Singh have admitted this fact in their evidence in Court. It has come in the evidence that the Returning Officer of Muzaffarpur Parliamentary constituency was also the Returning Officer of Vaishali Parliamentary Constituencies and ballot boxes of both the Parliamentary Constituencies had to be kept and counted at Muzaffarpur. Under the circumstances some specious place was naturally required so that there may not be any difficulty in keeping the ballot boxes and in counting the ballot papers of both the Parliamentary constituencies at the same place under the supervision of common Returning Officer. Under the circumstances if venue for keeping the ballot boxes and for counting the ballot papers was shifted from Collectorate campus of Muzaffarpur to Sikandarpur Stadium, it cannot be said that the Returning Officer did so for the purpose of helping the respondent by manipulating ballot boxes. It may not be out of place to mention here that P.W. 12 Sarju Tiwary of being asked in his cross-examination (para 14) has stated that the other candidates had been allowed to operate only eight vehicles for canvassing which were checked

by the police but Sri Farnandis had been permitted to operate 100 vehicles which were not checked by the police and it is due to this that he has stated that the ballot boxes were kept in an incomplete stadium with a view to manipulating and replace the ballot boxes in favour of Janta Dal candidate. As is apparent from this statement of P.W. 12, it is mere suspicion that the ballot boxes were kept at Sikandar-pur stadium and ballot papers were counted there with a view to help Janta Dal candidate by manipulation of ballot boxes. There is no contemporaneous document in support of this allegation. That being so it is difficult to accept that venue of strong room and counting of ballot papers was changed with view to help Janta Dal candidate by manipulating ballot boxes.

45 Rameshwar Prasad Singh, P.W. 52 Mohan of E.P. No. 5 of 1991 that sensitive booths were declared not on the basis of the petition filed by the election petitioner but to suit the convenience of the respondent and in this way those booths were declared sensitive where the election petitioner has a large number of supporters and voters and where peaceful polling was held since long and there was no apprehension of disorderly polling. In support of this allegation the election petitioners have examined P.W. 21 Raghunath Pandey and P.W. 53 Ram Kumar Singh. P.W. 21 Raghunath Pandey who is election petitioner in E.P. No. 5 of 1991 has stated numbers 7 and 8 of his deposition that he had filed petition (Ext. 3/A) before the Returning Officer as well as before the Chief Electoral Officer, Bihar for mentioned in the list attached with the petition were declaring certain booths as sensitive but the booths not declared sensitive. Declaration of any booth as sensitive depends upon the satisfaction of the Returning Officer that the same is actually sensitive. It is true that the Returning Officer is expected to take into consideration the suggestions, of the political parties or their candidates in such matters but I do not think that suggestion of the candidates in this regard is binding on the Returning Officer. That Returning Officer did not declare the booths as mentioned in the petition (Ext. 3/A) filed by P.W. 21 sensitive with a view to help the respondent and that too when there is no paper (exhibit) on record to show that the booths mentioned the list attached with the petition (Ext. 3/A) had never been declared sensitive in earlier elections. P.W. 53 Ram Kumar Singh has stated in his examination-in-chief (para 9) that on 17-5-91 the congress candidate (P.W. 21) had filed a petition before the Returning Officer for declaration of certain booths as sensitive but the Returning Officer did not do so. P.W. 53 has admitted in his cross-examination (para 50) that he was not present at the time of filing of petition by congress candidate before the Returning Officer for declaring certain booths as sensitive. That being so, he appears to be a hearsay witness on this point. That being so, the evidence of P.W. 53 in this regard is of little help to the petitioners in supporting the allegation regarding declaration of sensitive booths. Further more, the Returning Officer as R.W. 21 has stated in para 17 of his deposition that while deciding sensitive and super sensitive booths he had taken into con-

sideration the views as well as the complaint of the candidates concerned and had acted in accordance with the guideline given by the Election Commission of India, Chief Electoral Officer of Bihar and Home Department of State Govt. In his cross-examination (para 47) the Returning Officer (R.W. 21) has denied the allegation that he had not taken the views of contesting candidates into consideration while deciding sensitive and super sensitive booths. He has further denied the allegation that only those booths were declared sensitive where congress candidate was popular. In view of what has been pointed out above it is difficult to accept the allegation of the election petitioners in this regard.

46. It has been alleged by the election petitioner in E. P. No. 5 of 1991 that Ramai Ram, Hind Keshari Yadav and Brij Bihari Prasad who were ministers in the Government of Bihar and M.L.As Maheshwar Prasad Yadav and Kamal Paswan accompanied by armed men and police escort party were canvassing for Janta Dal candidate and were terrorising voters but the Returning Officer did not take any action inspite of the petitions filed by the election petitioner (P.W. 21) and his election agent (P.W. 53) on 17-5-1991. In support of this allegation the election petitioner have examined P.W. 16 Rudradeo Thakur, P.W. 24 Sachidanand Thakur, P.W. 25 Ram Yogendra Singh, P.W. 21 Raghunath Pandey, P.W. 22 Prem Kumar Singh, P.W. 23 Nagendra Prasad Thakur, P.W. 24 Sachidanand Thakur, P.W. 25 Ram Babu Sahi, P.W. 26 Harilal Ram, P.W. 28 Rajaram Prasad Singh, P.W. 38 Tej Narayan Singh, P.W. 42 Jaleshwar Pandey, P.W. 43 Yogendra Mishra, P.W. 45 Rameshwar Prasad Singh, P.W. 52 Mohan Kumar Mishra and P.W. 53, Ram Kumar Singh. The fact that the aforesaid ministers and M.L.As were canvassing for the Janta Dal candidate is not disputed. Moreover, this fact is also apparent from the evidence of R.W. 1 Amrish, R.W. 2 Shyam Kalyan, R.W. 3 Ram Pukar Singh, R.W. 4 Ashok Bharti, R.W. 6 Krishnadeo Maho, R.W. 7 Krishnadeo Prasad, R.W. 8 Shanker Lohiya, R.W. 10 Ram Chandra Rai, R.W. 11 Pawan Kumar Rai, R.W. 12 promod Kumar Rai, R.W. 13 Ram Parchhan Sah, R.W. 28 Kamal Paswan, R.W. 29 George Farnandis. R.W. 32 Maheshwar Prasad Yadav, R.W. 33 Ramai Ram and R.W. 34 Brij Bihari Prasad. The fact that at the time of canvassing the said ministers and M.L.As were accompanied by armed people and police escort party has not been admitted by the aforesaid witnesses examined by the respondent. In view of this, it has to be seen as to how far the evidence adduced by the election petitioners on this point is reliable or acceptable. As mentioned earlier, P.W. 21 is the election petitioner himself in E.P. No. 5 of 1991. He has stated that the aforesaid ministers and M.L.As accompanied by some persons of criminal types were canvassing for Janta Dal candidate and a petition had been filed by his election agent Ram Kumar Singh (P.W. 53) before the Returning Officer against canvassing by armed people and intimidation of voters by them. The petition filed by the election agent Ram Kumar Singh (P.W. 53) has not been brought on record as exhibit. Three letters dated 17-5-91 (Exts. B1 to B1D) addressed to the Returning Officer by the election petitioner Raghunath Pandey have

been brought on record. A perusal of these letters would show that there is no mention of the names of ministers Ramai Ram and Hind Keshari Yadav and M.L.As Kamal Paswan and Maheshwar Prasad or any of the armed persons in these letters. The allegation in these letters is simply against Brij Bahari Prasad that he was threatening and intimidating the voters and prayer is for taking action against him. The evidence of P.W. 21 Raghunath Pandey to the aforesaid effect does not find support from these letters so far as canvassing by ministers Ramai Ram and Hind Keshari Yadav and M.L.As Kamal Paswan and Maheshwar Yadav accompanied by armed men and criminals is concerned. Even with regard to minister Brij Bihari Prasad, the allegation in said letters is that he being armed with fire arms was moving in Muzaffarpur town under police protection and was threatening voters. There is nothing to the effect that Brij Bihari Prasad was moving with armed people of criminal type. Further more, the evidence of P.W. 21 in para 39 of his deposition is to the effect that the said ministers and M.L.As accompanied by undesirable persons had canvassed in between 29th April, 1991 and 7th May, 1991 but no petition was filed prior to 17-5-91 against such canvassing and threatening of voters. There is no explanation by P.W. 21 for not filing petition before the Returning Officer prior to 17-5-1991. The such conduct on the part of P.W. 21 Raghunath Pandey does not appear to be natural and hence his evidence on the portion of canvassing by the aforesaid ministers and M.L.As accompanied by armed criminals does not inspire confidence.

47. P.W. 53 Ram Kumar Singh is the election agent of election petitioner Raghunath Pandey. He has stated that the aforesaid ministers and M.L.As accompanied by more than 100 armed people were canvassing for Janata Dal candidate as a result of which the voters got terrorised and he intimated the Returning Officer about that by filing a petition. In his cross-examination (para 33) P.W. 53 has stated that the Returning Officer did not pass any order on his petition and even then he neither lodged F.I.R. against canvassing by armed people nor complained to the Election Commission of India or the Chief Electoral Officer, Bihar against the said conduct on the part of the Returning Officer. On being asked in his cross-examination (para 34) he could not name even a single voter who had got terrorised due to canvassing by the said ministers and M.L.As accompanied by armed people. As it appears from the evidence in para 34 of his deposition, P.W. 53 is a hearsay witness on the point that voters got terrorised due to canvassing by armed people.

48. So far as the other witnesses examined by the election petitioner on this point are concerned, only some of them have stated that voters got terrorised due to canvassing by the said ministers and M.L.As accompanied by armed people and their evidence to this effect has been challenged in their cross-examination. Witnesses like P.W. 17 Siyaram Choudhary, P.W. 20 Yogendra Singh, P.W. 25 Ram Babu Sahu, P.W. 26 Harilal Ram, P.W. 28 Rajaram Singh have not stated that voters had got terrorised due to con-

vassing by the aforesaid ministers and M.L.As accompanied by armed people. Further more, P.W. 22 Prem Kumar Singh, on being asked, in his cross-examination (Para 10) stated that Lal Bahadur Singh of village Narauli, Ashok Kumar Sahu of village Sabajpur, Sachidanand Singh of village Prahaldpur, Baki Bihari of village Manika and others had told him that they had got terrorised by canvassing of armed people on behalf of Janta Dal but they had cast their votes. The said persons have not been examined in court as witnesses to corroborate the testimony of P.W. 22 to the said effect. Had he said persons actually got terrorised, they would not have cast their votes. In para 10 of his deposit on P.W. 22 had admitted that he had not filed any petition before any authority intimating thereby that voters had got terrified due to canvassing by armed people. The other witnesses on this point do not say that any voter did not cast his vote due to being terrorised. P.W. 24 Sachidanand Thakur has simply stated about canvassing by ministers and M.L.As and their body guards but he does not say that armed people accompanied the ministers and M.L.As at the time of canvassing. According to P.W. 28 Rajaram Prasad only two to four armed people accompanied the said ministers and M.L.As at the time of canvassing. By saying so in para 6 of his deposition, P.W. 38 that the voters had got terrorised does not others that ministers and M.L.As accompanied by more than 100 people were canvassing on behalf of Janta Dal candidate. P.W. 38 Girijanandan Singh has stated that the said ministers were accompanied by 50 to 60 armed persons at the time of canvassing as a result of which the voters got terrorised and he had informed Ram Kumar Singh (P.W. 53) about canvassing on behalf of Janta Dal in the aforesaid manner and effect thereof on the voters. P.W. 53 Ram Kumar Singh has not stated that this witness had informed him about the above fact and hence the evidence of P.W. 38 that the voters had not terrorised does not appear to be safely reliable. Further more, on being asked, in his cross-examination (para 5) to name the armed people accompanying the Ministers and M.L.As he pleaded his ignorance. He has named certain persons in para 6 of his deposition but has admitted that they were not armed. His evidence in para 6 of his deposition further shows that there was security arrangement at the booths visited by him and those who wanted to cast vote had cast their votes. If so, then the evidence to the effect that the voters had got terrorised becomes unreliable. P.W. 43 Janardan Mishra and P.W. 45 Rameshwar Mishra who are Mukhiyas of their Gram Panchayats had admittedly not informed the police or any authority about canvassing by armed people on behalf of Janta Dal candidate. Such conduct on their part cannot be said to be natural conduct. P.W. 45 has named certain persons who were frightened by canvassing but those persons have not been examined to corroborate the testimony of P.Ws that voters had got terrorised due to canvassing by ministers and M.L.As accompanied by armed people. P.W. 52 Mohan Kumar Mishra has stated that he had informed Ram Baran Thakur (P.W. 2) about canvassing by ministers and M.L.As accompanied by

armed people and the effect thereof on the voters. But Ram Baran Thakur (P.W. 2) has not stated so and so there is no corroboration. In view of what has been pointed out above, the evidence adduced by the election petitioners on this point does not inspire confidence and hence it is difficult to accept the allegation regarding canvassing by armed people and voters getting terrorised thereby.

49. It has been alleged by the election petitioner in E.P. No. 5 of 1991 that flag march at the instance of the Returning Officer was made only in those areas where petitioner in E.P. 5/91 was popular and had a large number of voters and supporters, who could help him in election in question, but on account of flag march they were terrified and their initiative and zeal was crushed down. In support of the allegation to this effect the election petitioners have examined P.W. 12 Sarju Tiway, P.W. 16 Rudradeo Thakur, P.W. 20 Yogendra Singh, P.W. 21 Raghunath Pandey, P.W. 22 Prem Kumar Singh, P.W. 23 Nagendra Pd. Thakur, P.W. 25 Ram Babu Sahi, P.W. 26 Hari Lal Ram, P.W. 33 Dilip Kumar and P.W. 53 Ram Kumar Singh. These witnesses have supported the allegation to the aforesaid effect. Election petitioner Raghunath Pandey (P.W. 21) has specifically stated in paras 9, 12 & 41 of his deposition that prior to polling there was flag march by C.R.P.F. & B.S.F. on 18th & 19th May, 1991 at the instance of respondent George Farnandis in Muzaffarpur and Gaijha Assembly constituencies where Congress Supporters were in majority. His evidence to this effect has been challenged in his cross-examination (para 41). In his cross-examination (para 41) P.W. 21 has admitted that there is no proof of the fact that flag march was at the instance of George Farnandis. The factum of flag march has been admitted by R.W. 6 Krishna Deo Mahto, R.W. 7 Krishna Deo Prasad, R.W. 8 Shanker Lohiya, R.W. 10 Ram Chandra Rai, R.W. 11 Pawan Kumar Rai, R.W. 12 Promod Kumar Rai and R.W. 21 Hem Chand Shirohi. Out of these witnesses R.W. 21 is the Returning Officer himself. He (R.W. 21) has stated in para 12 of his deposition that there was flag march by C.R.P.F. and other police force in the entire Muzaffarpur district. He has denied the allegation that there was flag march in only those areas where majority of the voters and supporters of Congress candidate were residing. R.W. 6 Krishna Deo Mahto, R.W. 7 Krishna Deo Prasad, R.W. 8 Shanker Lohiya, R.W. 10 Ram Chandra Rai, R.W. 11 Pawan Kumar Rai and R.W. 12 Promod Kumar Rai have specifically stated about flag march in Minapur and Kurhani assembly constituencies segments of Parliamentary constituency in question. In support of the oral evidence of the P.Ws. to the effect that there was flag march only in those areas where there were Congress supporters, there is no document on record. There appears no reason to disbelieve the evidence of the Returning Officer (R.W. 21) that flag march was in the entire Parliamentary constituency in question. The evidence of P.W. 21 that there was flag march in only Muzaffarpur and Gaijha assembly constituencies has been falsified by the evidence of P.W. 22 Prem Kumar Singh who has stated in para I of his deposition that there was flag march in Bhochaha assembly constituency area also. It is an

open secret that at the time of election trouble is apprehended by the authority concerned at the hands of booth capturers and trouble makers and in order to ward off the trouble at the hands of such elements it is necessary for the authority concerned to take recourse to flag march. That being so, it is difficult to accept the allegation that flag march by the C.R.P.F. and other police force was resorted to with a view to terrorise the voters. In view of this the allegation and the evidence of the aforesaid P.W.s that voters got terrorised due to flag march by the police force can hardly be accepted.

50. It has been alleged by the election petitioner in E.P. No. 5 of 1991 that there was distribution of illegal arms and ammunitions on behalf of respondent amongst his workers but the same were not seized by the Returning Officer even when a petition was filed by the election agent (P.W. 53) of the election petitioner Raghunath Pandey (P.W. 21). In support of this allegation the election petitioners have examined P.W. 28 Rajaram Singh, P.W. 30 Ashok Kumar Giri, P.W. 41 Satughan Thakur P.W. 42 Jaleswar Pandey, P.W. 45 Rameshwar Pd. Singh and P.W. 53 Ram Kumar Singh. The allegation to the aforesaid effect has been denied by R.W. 6 Krishnadeo Mahto, R.W. 7 Krishnadeo Prasad, R.W. 8 Shanker Lohiya, R.W. 10 Ram Chandra Rai, R.W. 11 Pawan Kumar Rai, R.W. 12 Pramod Kumar Rai, R.W. 13 Ram Barichhan Sah, R.W. 28 Kamal Paswan, R.W. 29 George Farnandis, R.W. 32 Maheshwar Pd. Yadav, R.W. 33 Ramai Ram and R.W. 34 Brij Bihari Prasad. Now, it has to be seen as to how far the evidence of the witnesses examined by the election petitioners in support of the aforesaid allegation is reliable and acceptable.

51. P.W. 28 Rajaram Singh has stated that Brij Bihari Prasad (R.W. 34), a Minister in Bihar Government, had himself distributed arms and explosives in Minapur Block areas on behalf of Janta Dal and he (P.W. 28) informed the election agent of Congress candidate about it. P.W. 28 has further stated in para 9 of his deposition that on 16th May, 1991 while passing through village Mahdaiya he had seen Brij Bihari Pd. (R.W. 34) getting arms and explosives distributed at Mahdaiya village after sun set but before it was dark. He has further stated that at Raghampur village also he happened to see distribution of arms and explosives by the said Minister Brij Bihari Prasad. According to him (P.W. 28) one rifle and some explosives kept in bundle were given to Chandreshwar Prasad at village Mahdaiya but at village Raghampur only explosive in bundle was given to one Sitaram. It may be pointed out that P.W. 28 in his cross-examination (para 9) has admitted that it was purely his guess that bundles given at Mahdaiya and Raghampur contained explosives. It may be pointed out that P.W. 28 is an advocate but admittedly he did not lodge F.I.R. against distribution of arms and explosives by the said Minister. The evidence of P.W. 28 to the aforesaid effect has not only been challenged but the respondent has also examined Brij Bihari Prasad as R.W. 34 to deny the allegation that he distributed arms and ammunition on his behalf. In view of what has been pointed out above, the evidence of P.W. 28 to the aforesaid effect does not inspire confidence.

52. P.W. 30 Ashok Kumar Giri has stated that during the course of canvassing on behalf of the Congress candidate on 15th May, 1991 at 4 to 5 P.W. while he was passing through village Bakrichatti he had seen Minister Brij Bihari Prasad distributing arms and ammunitions at village Bakrichatti to 4 to 5 persons out of whom he identified one Murtza and informed Ram Kumar Singh, the election agent of Congress candidate about that. It may be pointed out that Brij Bihari Prasad as R.W. 34 has specifically denied distribution of arms and ammunitions by him at village Bakrichatti. It may be pointed out that P.W. 30 has admitted in para 8 of the deposition that he had neither filed any F.I.R. regarding distribution of arms and ammunitions by the said minister nor had informed the Returning Officer or Election Commission about that but had informed Ram Kumar Singh about the same. Ram Kumar Singh as P.W. 53 has stated in para 8 of his deposition that on getting information from Ashok Kumar Giri (P.W. 30) and others about distribution of arms, he (P.W. 53) filed a petition before the Returning Officer requesting therein that distributed arms and ammunitions be seized but the Returning Officer did not take any action. The petition said to have been filed by P.W. 53 Ram Kumar Singh before the Returning Officer in this regard has not been on record as an exhibit. In absence of contemporaneous document like the said petition. It is difficult to rely on the evidence of P.W. 30 and P.W. 53 to the said effect and that too when distribution of arms and ammunitions has been specifically denied by Brij Bihari Prasad as R.W. 34.

53. P.W. 41 Satrugan Thakur has stated in his examination-in-chief that during the course of canvassing minister Brij Bihari Prasad, Ramai Ram, Hind Keshari Yadav and M.L.As. Maheshwar Prasad and Kamal Paswan were distributing arms, ammunitions and explosives to the villagers. He has further stated that he had been minister Brij Bihari Prasad distributing pistols and cartridges at village Kaphen in presence of Janta Dal candidate, George Farnandis (respondent) and he had informed Ram Kumar Singh, the election agent of Congress candidate, about this. It may be pointed out that the evidence of P.W. 41 to the said effect has been challenged in his cross-examination (paras 4 and 5) and minister Brij Bihari Prasad as R.W. 34 has specifically denied that he had distributed arms and ammunitions at village Kaphen. It may be pointed out that P.W. 41 is not a resident of village Kaphen where distribution of arms, ammunitions and explosives by Brij Bihari Prasad has been alleged by him. He has claimed to have seen distribution of arms and ammunitions during the course of canvassing on behalf of Congress candidate. On being asked, in his cross-examination (Para 3) he could not say the dates on which he had canvassed for Congress candidate. He also could not name the villages in which he had canvassed for the Congress candidate on particular dates. In view of this his claim that he had canvassed for Congress candidate appears to be doubtful. When canvassing by him is itself doubtful, the question of his seeing distribution of arms, ammunitions and explosives by the aforesaid Ministers and M.L.As. during the course of canvassing at village Kaphen would hardly arise.

Furthermore, P.W. 41 has admitted in his cross-examination (Para 5) that he had not filed any written petition before any authority regarding distribution of arms, ammunitions and explosives by the aforesaid ministers and M.L.As. amongst the villagers. Such conduct on his part does not appear to be natural. In view of what has been pointed out above, it is difficult to rely on the evidence of P.W. 41 on the point of distribution of arms, ammunitions and explosives on behalf of Janta Dal candidate.

54. P.W. 42 Jaleshwar Pandey has stated that Minister Hind Keshari Yadav had distributed arms and ammunitions in his (P.W. 42) village and had given country made revolver to Shri Bipat Rai Bhand of his village. He has further stated that he had informed Ram Kumar Singh (P.W. 53) and Bhagwan Lal Sahani (not examined) about distribution of by Minister Hind Keshari Yadav. The evidence of P.W. 42 to the aforesaid effect has been challenged in his cross-examination.

55. P.W. 42 has stated that he did not inform any authority about distribution of arms and ammunitions by Hind Keshari Yadav. Such conduct on the part of P.W. 42 cannot be said to be natural. Under the circumstances even his evidence does not inspire confidence.

56. P.W. 45 Rameshwar Prasad Singh has stated that Kamal Paswan, M.L.A., who had canvassed for Janta Dal candidates, had distributed arms, ammunitions and explosives at village Bharwari and had given the same to Ram Kripal Mahato and he (P.W. 45) had informed Ram Kumar Singh (P.W. 53), the election agent of Congress candidate, about the same. The evidence of P.W. 45 to the said effect has been challenged in his cross-examination. Apart from that, Sri Kamal Paswan, M.L.A. as R.W. 28 has denied the allegation that he had distributed arms, ammunitions and explosives on behalf of Janta Dal candidate. It may be pointed out that P.W. 45 is a Mukhiya of the Gram Panchayat but admittedly he did not lodge F.I.R. against the distribution of arms and ammunitions by Kamal Paswan, M.L.A. Had P.W. 45 been a layman not lodging of F.I.R. or giving information before authority could have been understandable but such conduct on his part when he was a Mukhiya of a Gram Panchayat is most unnatural. Further more, I do not think that an M.L.A. would publically distribute arms and ammunitions. In view of this even the evidence of P.W. 45 does not appear to be safely reliable.

57. P.W. 53 is Ram Kumar Singh. He is the election agent of Congress candidate. Though in para 8 of his deposition he has stated that Janta Dal candidate Sri George Farnandis had got arms and ammunitions distributed in huge quantity for capturing booths but admittedly P.W. 53 is not an eye witness on this point rather he got information about this from others as named in para 8 of his deposition. He has stated that he filed a petition before the Returning Officer requesting therein to get the distributed arms and ammunitions seized but the Returning Officer did not take any action. His evidence to the aforesaid effect has been

challenged in his cross-examination. As pointed out earlier, the petition said to have been filed by P.W. 53 before the Returning Officer in this regard has not been brought on record as an exhibit. Admittedly P.W. 53 did not lodge any F.I.R. regarding distribution of arms and ammunitions on behalf of Janta Dal candidate. In view of this, it is difficult to rely on the oral testimony of P.W. 53 on the point of distribution of arms and ammunitions on behalf of Janta Dal candidate. As is apparent the evidence adduced by the election petitioners in support of the allegation regarding distribution of arms and ammunitions on behalf of Janta Dal candidate for capturing the booths is not reliable and that being so, it is difficult to accept the allegation to the said effect.

58. It has been alleged by the election petitioner in E.P. No. 5 of 1991 that the Returning Officer allowed George Farnandis to ply 100 vehicles for election purpose but the election petitioner Raghunath Pandey was allowed to ply only 8 vehicles though there was no restriction on plying vehicles during the canvassing period. It was contended on behalf of the election petitioners that the Returning Officer did so with a view to help the respondent in the election in question. In support of the above allegation the election petitioner has examined P.W. 12 Sarju Tiwary and P.W. 21 Raghunath Pandey. P.W. 12 Sarju Tiwary has stated in his examination-in-chief (para 1) that independent candidate Shambhu Sah had been permitted to use 8 vehicles for canvassing purpose but George Farnandis, the Janta Dal candidate, was using about 100 vehicles. The evidence of P.W. 12 to this effect has been challenged in his cross-examination (para 11). It may be pointed out that on being asked in his cross-examination (para 11) P.W. 12 could not give the registration number of any of the alleged 100 vehicles used by Janta Dal candidate for election purpose. Admittedly, P.W. 12 had not protested either orally or in writing against plying of 100 vehicles for canvassing purpose of Janta Dal candidate. In view of this the evidence of P.W. 12 on this point does not appear to be reliable.

59. So far as P.W. 21 Raghunath Pandey is concerned, his evidence in his examination-in-chief (para 2) is to the effect that all the candidates had been permitted by the Returning Officer to use 8 vehicles for election purpose but respondent George Farnandis was using nearly 100 vehicles and no limit had been fixed by the Returning Officer on plying of the vehicles to be used by Sri Farnandis. He has further stated that on the day of poll he had been permitted to use only three vehicles by the Returning Officer. The evidence of P.W. 21 to the aforesaid effect has been challenged in his cross-examination (para 34). P.W. 21 has further stated he had filed a petition (Ext. 3) before the Returning Officer for permission to use 26 vehicles but by an intimation letter he was allowed to use only 8 vehicles. It may be pointed out that the intimation letter has not been brought on record as an exhibit in support of the evidence of P.W. 21 to the aforesaid effect. P.W. 21

being one of the election petitioners he undoubtedly an interested witness and hence it would not be safe to rely on his evidence to the aforesaid effect unless corroborated in material-particulars by some independent and reliable evidence but there is no independent and reliable evidence to support the evidence of P.W. 21 to the aforesaid effect.

60. As against the above evidence adduced on behalf of the election petitioners, the respondent has examined the Returning Officer Hem Chand Shirohi (R.W. 21) as well as himself (R.W. 29) to deny the allegation to the aforesaid effect. The Returning Officer as R.W. 21 has stated in his examination-in-chief (para 14) that those candidates who applied for permission to operate vehicles for election purpose were allowed to operate 8 vehicles. He has denied the allegation that Sri Farnandis had been allowed to operate 100 vehicles for election purpose. He has also denied that he was biased from all candidates except Janta Dal candidate George Farnandis. The Respondent as R.W. 29 has denied in para 6 of his deposition that he had used 100 vehicles for election purpose. In view of the evidence of P.Ws. 21 and 29 to the above effect, it is difficult to accept the evidence of P.W. 12 and P.W. 21 with regard to the allegation under consideration.

61. It has been alleged by election petitioner Raghunath Pandey in E. P. No. 5 of 1991 that the Returning Officer appointed the Presiding Officers according to the choice of respondent George Farnandis to commit bunglings in polling to help the respondent. The Returning Officer as R.W. 21 has in para 19 of his deposition has denied that the polling parties had been constituted according to the choice of respondent Sri Farnandis. In support of the allegation to the above effect there is only one witness who is P.W. 21 Raghunath Pandey petitioner in E.P. No. 5 of 1991. P.W. 21 has stated in para 12 of his deposition that the Returning Officer constituted the polling party at the instance of the respondent. His statement to this effect has been challenged in his cross-examination. There is no other evidence to corroborate the testimony of P.W. 21 to the said effect. In absence of any corroborative evidence and in view of the denial of the allegation by the Returning Officer (R.W. 21) it is difficult to accept the evidence of P.W. 21 as interested witness, to this effect. Accordingly, I find no merit in the allegation that the Returning Officer had appointed Presiding Officers or had constituted polling party on the choice of the respondent to commit bunglings in polling.

62. It has been alleged by the election petitioner Raghunath Pandey in E.P. No. 5 of 1991 that the Returning Officer deputed armed forces to those polling stations which were located in the areas where he (Raghunath Pandey) was very popular and deputed lathi party police to the rest of the booths where respondent was expected to get majority of votes by unfair and foul means. The Returning Officer as R.W. 21 has in para 18 of his deposition denied the allegation to the aforesaid effect. He (R.W. 21) has further denied the allegation that homeguards had been deputed against the instruction of the Election Commission but had admitted that chowkidars and

Dafadars had been deputed. He has further stated that police personnel had not been deputed at normal booths due to non-availability of police personnel in sufficient number. In support of the above allegation the election petitioners have examined P.W. 16 Rudradeo Thakur, P.W. 21 Raghunath Pandey, P.W. 28 Rajaram Pd. Singh, P.W. 38 Tej Narayan Singh, P.W. 41 Satrugnan Thakur, P.W. 42 Jaleshwar Pandey, P.W. 45 Rameshwar Pd. Singh and P.W. 53 Ram Kumar Singh. Now it has to be seen as to how far the evidence of these witnesses is reliable and acceptable.

63. P.W. 16 Rudradeo Thakur in para 4 of his deposition has stated that on the day of poll there was deputation of B.S.F. at all booths of three Gram Panchayats which had been visited by him and where majority of the people are congress supporters. It may be pointed out that the evidence of P.W. 16 is confined to the deputation of B.S.F. at booths in three Gram Panchayats visited by him. He has not stated that armed forces like B.S.F. had been deputed at only those booths where majority of the people are congress supporters and lathi party police or Homeguards or Chowkidars and Dafadars had been deputed on other booths. P.W. 21 has simply stated that he had filed petition before the Returning Officer as well as before the Chief Electoral Officer, Bihar for declaring certain booths as sensitive but the booths mentioned in his petition were not declared sensitive and instead of deputing B.S.F. or C.R.P.F. to the said booths. Homeguards were deputed there even when the Election Commission of India had directed not to depute Homeguards in the said election. P.W. 21 Raghunath Pandey has not stated that armed forces were deputed only at those booths where congress supporters were in majority and lathi party police/Homeguards/Chowkidars/Dafadars were deputed at other booths. P.W. 28 has simply stated that Homeguards were deputed at nine booths of Minapur Assembly constituency segment which were located at Primary School Rambour Ratan, Primary School, Bhogwanpur Chapra, Primary School, Banghara, Primary School Harnur Kenya Vidhayalaya Mahdaiya, Middle School Mahdaiya, Primary School Mushachak and Primary School of Raghonpur for maintaining law and order. It may be pointed out that even P.W. 28 does not say that armed forces had been deputed only at those booths where congress candidate was popular and at other booths lathi party police/Homeguards/Chowkidars/dafadars had been deputed. P.W. 38 Girija Nandan Singh has simply stated that at booth Nos. 65-66 of Rajna Fakuli Gram panchayat areas there was deputation of Homeguards but at other four booths of the said Gram Panchayat there was deputation of armed forces. P.W. 38 does not say that deputation of armed forces was only at those booths where congress supporters were in majority. P.W. 41 Satrugnan Thakur has stated that at booth Nos. 117, 118, 119, 120, 121, 122, 123 and 124 of Maudhal Kapehn Gram Panchayat and Mohamadpur Mubarak Gram Panchayat there was deputation of Homeguards with lathi and at booth Nos. 113, 114, 115, 116 of the said Gram Panchayat there was deputation of armed police for maintaining law and orders. Even P.W. 41 does not say that deputation of armed forces was only at those booths where majority of voters

were congress supporters and Homeguards was deputed at other booths. P.W. 42 Jaleshwar Pandey has stated that Homeguards had deputed at booth No. 52 of Minapur Assembly Constituency Segment where he was a voter. He does not say that armed forces had been deputed at those booths where Congress supporters were in majority. P.W. 45 Rameshwar Pd. Singh has stated that at booth Nos. 54 and 55 of Bharwari Gram Panchayat there was deputation of Da'p'ri, Swaim Sewak of gram panchayat and chowkidars with lathi for maintaining law and orders and at remaining three booths of the said gram panchayat there was deputation of armed police. Even P.W. 45 does not say that deputation of armed police was only at those booths where congress supporters were in majority. P.W. 53 Ram Kumar Singh, who is the election agent of congress candidate Raghunath Pandey has stated that on 17-5-91 congress candidate had filed a petition before the Returning Officer for declaring certain booths as sensitive but the Returning Officer did not do so and deputed CRPF and BSF personnel at those booths where Congress supporters were in majority but deputed homeguards against the direction of Election Commission at those booths which, according to the congress candidate, were sensitive. Statement of P.W. 53 to the aforesaid effect has been challenged in his cross-examination (Paras 50-51). Even P.W. 53 has admitted that he was not present at the time of filing of petition by the congress candidate before the Returning Officer for declaration certain booths as sensitive. Thus he appears to be a hearsay witness on this point. P.W. 53 has further admitted in para 50 of his deposition that he had not talk with the Returning Officer regarding deputation of CRPF and BSF and Homeguards and he had not seen the letter of the Election Commission containing direction not to depute homeguards rather had heard about that from congress candidate. The congress candidate, namely, Raghunath Pandey has not corroborated the statement of P.W. 53 to the said effect. On being asked in his cross-examination (para 51), P.W. 53 could not say the details of booths and places of Bhochoha, Sakra, Kurhani and Minapur Assembly Constituency Segments where Homeguards had allegedly been deputed. No deputation chart has been brought on record to substantiate the allegation that Homeguards had been deputed at sensitive booths and armed police personnel had been deputed at only those booths where congress supporters were in majority. As is apparent the oral evidence adduced by the election petitioners on this point does not inspire confidence and under the circumstances it is difficult to accept the allegation that armed police personnel had been deputed only at those booths where congress supporters were in majority and Homeguards had been deputed at other booths. There is no documentary evidence to substantiate the allegation to the said effect. Under the circumstances it is difficult to accept the allegation on this point.

64. It has been alleged by the election petitioner in E.P. No. 5 of 1991 that though the Returning Officer was at Muzaffarpur on the day of poll but he made deliberate delay in reaching three booths located at Rameshwar Singh College at Muzaffarnur to give full opportunity to the booth capturers to complete the work of capturing and came there at about 6 P.M.,

The Returning Officer (R.W. 21) has stated in paras 47 and 48 of his deposition that he had sent S.D.O. and Deputy Superintendent of Police to the booths at Rameshwar Singh College on the day of poll and subsequently he himself went there at 6 P.M. The evidence of the Returning Officer to the said effect does not appear to have been challenged in his cross-examination. The evidence of the Returning Officer to the effect that he had deputed S.D.O. and Deputy Superintendent of Police at booths located at Rameshwar Singh College, Muzaffarpur does not appear to have been challenged. However, the election petitioners have examined P.W. 12 Sarju Tiwary, P.W. 21 Raghunath Pandey, P.W. 40 Tej Narain Thakur, P.W. 59 Mubarak Hussain and P.W. 60 Bishwanath Singh Chauhan in support of the allegation that the Returning Officer deliberately delayed his arrival at the booths located at Rameshwar Singh College, Muzaffarpur with a view to give full opportunity to the booth capturers to complete the work.

65. P.W. 12 Sarju Tiwary has stated that on the day of poll at about 4 P.M. George Farnandis (Respondent) and Deputy Minister Brij Bihari Prasad accompanied by 100 persons came to the booth nos. 10Ka and 11 which were located at Rameshwar Singh College and captured the same and bogus voting was done in favour of Janta-Dal candidate. He has further stated that the said Deputy Minister and his supporters departed from the said booth when the petrolling party came there at about 4.30 P.M. The evidence of P.W. 12 has been challenged in his cross-examination (para 16). Though his evidence in his examination-in-chief is to the effect that George Farnandis was also there when the said booths were captured but in his cross-examination (para 16) he has admitted that the said booths were captured by Deputy Minister Brij Bihari Prasad and his men after the departure of George Farnandis from the said booths. There appears nothing in his evidence to show that the said booths were captured with the consent of George Farnandis and the Returning Officer deliberately delayed his arrival at the said booths. Sri Farnandis as R.W. 29 has in para 9 of his deposition denied that he along with Minister Brij Bihari Prasad and 100 armed persons went to the booths at Rameshwar Singh College, Muzaffarpur. It has been admitted by P. 12 that there was repoll at the said booths. The holding of repoll at the said booths, in fact, goes against the allegation that the Returning Officer had deliberately delayed his arrival at the said booths.

66. So far as P.W. 21 Raghunath Pandey is concerned, he has stated in para 11 of his deposition that there were three booths at Rameshwar Singh College where respondent George Farnandis came along with Minister Brij Bihari Prasad and 100 armed criminals and after departure of Mr. Farnandis from the booths at the said College Sri Brij Bihari Prasad captured the booths and indulged in bogus voting. The evidence of P.W. 21 to this effect has been challenged in his cross-examination (para 40). It may be pointed out that P.W. 21 is conspicuously silent in his evidence about the alleged undue delay on the part of the

Returning Officer in reaching the captured booths. So this allegation of the election petitioner in E.P. No. 5 of 1991 has not been supported by the election petitioner Raghunath Pandey himself in his evidence in Court.

67. P.W. 40 Tej Narain Thakur has deposed to the effect that he was a voter at booth no. 11 of Muzaffarpur Assembly Constituency segment and had been to the said booth at 2.45 P.M. and was in queue for casting vote but could not do so as Minister Brij Bihari Prasad accompanied by George Farnandis and men came there and compelled him to leave the booth. The statement of P.W. 40 to this effect has been challenged in his cross-examination (para 7). P.W. 40 has admitted in his cross-examination (para 5) that he had not filed any objection petition before any authority that he was not allowed to cast vote by Deputy Minister Brij Bihari Prasad. P.W. 40 has admitted in para 6 of his deposition that there was re-poll at the said booth on 12-6-91 and he did cast his vote at the time of re-poll. P.W. 40 does not say that the Returning Officer deliberately delayed his arrival at the said booth to enable the booth capturers to do their work.

68. P.W. 59 Mubarak Hussain was Presiding Officer at booth no. 10Ka located at Rameshwar Singh College, Muzaffarpur. He has stated that at about 4.45 P.M. Brij Bihari Prasad, Minister accompanied by 50 to 60 supporters came to booth no. 10Ka and asked him to hand over the ballot papers so that they may cast the same in the ballot boxes. He has further stated that he gave the ballot papers to the senior polling officer and the supporters of Brij Bihari Prasad began to cast votes by taking ballot papers from senior polling officer. He has further stated that while the supporters of the Minister were casting votes, Shri Raghunath Pandey came there at 5.35 P.M. and then the aforesaid Minister and his supporters left the booth and went away. He has further stated that he had informed the Returning Officer by sending a report about what had happened at the booth. There is no reason to disbelieve the evidence of P.W. 59 to the said effect though the same has been challenged in his cross-examination. It is not disputed that there was re-poll at the said booth. Since re-poll was held the capturing of the said booth has become immaterial. However, I may mention here that even P.W. 59 does not support the allegation that the Returning Officer deliberately delayed his arrival at the said booth with a view to facilitate the booth capturers to do their work.

69. P.W. 60 Bishwanath Singh Chauhan claims to have worked as Presiding Officer at booth no. 10 located at Rameshwar Singh College, Muzaffarpur. He has stated that at 4.45 P.M. 100 persons came to his booth and told him that they had come to cast their votes. He has further stated that on being asked the said persons stood in queue and cast their votes one by one. He has further stated that while the said persons were casting their votes, Raghunath Pandey (P.W. 21) came there and asked him as to why persons were being allowed to vote after 5 P.M. and further asked him to submit report. The evidence of P.W. 60 shows that the said persons were men of Minister.

P.W. 60 has admitted that there was re-poll at the said booth. It may be pointed out that even P.W. 60 does not say that the Returning Officer had deliberately delayed his arrival at the said booth to enable the booth capturers to do their work. As is apparent, the oral evidence adduced by the election petitioner does not prove that the Returning Officer deliberately delayed his arrival at the booths located at Rameshwar Singh College, Muzaffarpur to enable the booth capturers to do their work. As pointed out above, the Returning Officer as R.W. 21 has stated that he had deputed S.D.O. and Dy. S.P. to the said booths. The Returning Officer being over all in charge of the election must be a very busy person and under the circumstances it may not be expected of him that he will reach every booth immediately on getting report that the same had been captured. In the instant case the Returning Officer was the Returning Officer of two parliamentary constituencies and hence he must be too much busy on the day of poll. In view of this fact it is difficult to accept the evidence that the Returning Officer deliberately delayed his arrival at the said booth to enable the booth capturers to do their work.

70. It has been alleged by the election petitioner Sri Raghunath Pandey in E.P. No. 5 of 1991 that after the poll ballot boxes containing the ballot papers reached the Strong Room after such delay due to the helping attitude of the Returning Officer towards the respondent. The Returning Officer as R.W. 21 has stated in his evidence (para 46) that the ballot boxes containing ballot papers had reached the strong room by morning of 21-5-91 and has thereby denied the allegation to the aforesaid effect. In support of the allegation to the aforesaid effect the election petitioners have examined P.W. 11 Ratneshwar Prasad Singh, P.W. 12 Sarju Tiwary, P.W. 21 Raghunath Pandey and P.W. 53 Ram Kumar Singh.

71. P.W. 11 has stated in para 4 of his deposition that after the poll some ballot boxes containing ballot papers were brought to the strong room on the day of poll itself but some ballot boxes were brought on the next day and some ballot boxes on the third day from the day of poll and were kept in the rooms which are in the outer portion of the stadium. P.W. 11 in para 9 of his deposition has admitted that he was not watching the arrival of ballot boxes to the strong room after the poll. In view of this to P.W. 11 does not appear to be a competent person to say that some of the ballot boxes were brought on the next day and some on the third day from the day of poll.

72. So far as P.W. 12 Sarju Tiwary is concerned, he has also stated like P.W. 11 Ratneshwar Pd. Singh. He (P.W. 12) has admitted in Para 17 of his deposition that he had not filed any protest petition before the Returning Officer for the delay caused by the election machinery in bringing the ballot boxes to the strong room though he was the election agent of contesting candidate Sri Shambhu Sah. Such conduct on the part of P.W. 12 was most unnatural and goes to create doubt

about the reliability of his evidence that there was delay in bringing the ballot boxes to the strong room.

73. P.W. 21 Raghunath Pandey has stated in paras 3, 4 and 12 of his deposition that when the polling was over on 20-5-1991 the ballot boxes were not brought to Muzaffarpur on that day rather it took three days for the authorities to bring the ballot boxes to Muzaffarpur. He has further stated that that the booths of Muzaffarpur parliamentary constituency were within the radius of 30 K.M. from Muzaffarpur and delay in bringing ballot boxes to Muzaffarpur was purposely made at the instance of the respondent with a view to manipulate the ballot boxes and to replace them. The evidence of P.W. 21 to the said effect has been challenged in his cross examination (para 34). It may be pointed out that no contemporaneous document has been brought on record as exhibit by the election petitioner Raghunath Pandey (P.W. 21) to support his evidence to the aforesaid effect. As pointed out earlier, the Returning Officer as R.W. 21 has specifically stated that the ballot boxes reached the strong room by morning of 21-5-1991. Under the circumstances and in absence of any contemporaneous document it is difficult to accept the evidence of P.W. 21 Raghunath Pandey to the aforesaid effect.

74. P.W. 53 Ram Kumar Singh is the election agent of election petitioner Sri Raghunath Pandey. He has stated that though the polling was over on 20-5-1991 as 5 P.M. but the ballot boxes continued to be brought to the strong room for two to three days even though maximum distance of the booths from the strong room was 25 to 30 K.M. As pointed out earlier, there is no contemporaneous document to support the allegation that there was undue delay up to two to three days in bringing the ballot boxes to the strong room. The Returning Officer (R.W. 21) has denied the allegation to the said effect. It is difficult to accept the interested testimony of P.W. 53 to the aforesaid effect. There is no other evidence to support the allegation that there was undue delay in bringing the ballot boxes to the strong room and the reason for delay was the helping attitude of the Returning Officer towards the respondent. As is apparent the evidence adduced by the election petitioners on this point does not appear to be safely reliable and there is no document to substantiate their evidence to the aforesaid effect.

75. It has been alleged by the election petitioner in E.P. No. 5 of 1991 that the rooms in which the ballot boxes had been kept remained without the seal of the contesting candidates for a period of more than a week with a view to tamper with the ballot boxes in favour of respondent and the Returning Officer did so with a view to help the respondent in the election. In support of the allegation to this effect the election petitioners have examined P.W. 11 Ratneshwar Pd. Singh, P.W. 12 Sarju Tiwary, P.W. 21 Raghunath Pandey and P.W. 53 Ram Kumar Singh. P.W. 11 Ratneshwar Pd. Singh has stated that the rooms in which the ballot boxes were kept were not sealed for one week with a view to mani-

pullate and replace the ballot boxes in favour of Janta Dal candidate George Farnandis and were sealed after one week. In para 10 of his deposition P.W. 11 has admitted that he had heard that the rooms in which the ballot boxes had been kept were sealed when some candidates raised objection and he was not present when objection was raised. It is apparent that P.W. 11 is a hearsay witness on this point. He does not say as to from whom he had heard and that being so, it is difficult to rely on the evidence of a hearsay witness.

76. P.W. 2 Sarju Tiwary has stated that the rooms in which the ballot boxes were kept were not sealed for one week with a view to manipulate and replace the ballot boxes in favour of Janta Dal candidate and were sealed after one week. It may be pointed out that P.W. 12 has admitted in para 17 of his deposition that he had not filed any protest petition before the Returning Officer for not sealing the strong room for one week though he was the election agent of contesting candidate Sri Shambhu Sah. Such conduct on his part was most unnatural. His evidence to the aforesaid effect has been challenged in his cross-examination. Further more, it does not appear to be the case of the election petitioners that strong room were not sealed for one week as stated by this witness rather the allegation is that the strong rooms remained without seal of the candidates for a period of more than a week. P.W. 12 does not say like. His evidence also does not appear to be safely reliable.

77. P.W. 21 Raghunath Pandey in para 12 of his deposition has stated that the strong room where the ballot boxes had been kept were sealed after eight days of the polling at the instance of the respondent. His evidence to this effect has been challenged in his cross-examination (para 43). In paras 14 and 43 of his deposition P.W. 21 has admitted that he had not raised any written objection against the delay of eight days in sealing the strong room in which ballot boxes had been kept. Had there been actually delay of eight days in sealing the strong rooms, the natural conduct on the part of P.W. 21, one of the contesting candidates, would have been to protest before the Returning Officer. Apart from that, the allegation is that the strong room remained without the seal of the candidates for more than a week. It is not the allegation that the strong room was not sealed at all for one week or for more than that.

78. So far as P.W. 53 Ram Kumar Singh is concerned, he has stated that the strong room was not sealed for one week even after keeping ballot boxes therein. This witness has simply suspected manipulated due to alleged delay in bringing the ballot boxes in the strong room. Suspicion cannot take the place of proof.

79. It may be pointed out that the Returning Officer as R.W. 21 has in para 21 of his deposition denied that the ballot boxes were manipulated in the strong room and some of the genuine ballot boxes were replaced by other ballot boxes containing ballot papers in favour of Janta Dal candidate. However, the fact that the candidates were asked to put their seal on the lock of the strong room after one

week of the poll is apparent from the notice (Ex. 13) got published by the District Election Office. Muzaffarpur in a newspaper named "Prabhat Kamal" dated 28-5-91 and the evidence of the Returning Officer in para 46 of his deposition. Exhibit 13 is to the effect that the Returning Officer would be present in the strong room on 28-5-1991 at 11 A.M. and those candidates or their election agent who intend to put their seal on the strong room may do so on the sale of the strong room. For this delay of one week in calling upon the candidates to put their seal on the lock of the strong room, the Returning Officer has given explanation in para 46 of his deposition which is to the effect that he got an information regarding communal riot in Sakra Assembly constituency segment at about 8 P.M. in the night and hence proceeded there and while he was there at the place of communal tention, he got wireless message about assassination of Sri Rajiv Gandhi, former Prime Minister, and hence he returned to Muzaffarpur for maintaining law and order and for protecting government property from apprehended riot. He has further stated that tension continued for four to five days and under the circumstances there was delay in giving an opportunity to the candidates to put their seal over the strong room. The fact that there was communal riot and assassination of Sri Rajiv Gandhi has not been challenged rather the above facts have been taken in the cross-examination of the Returning Officer. In case of communal riot and assassination of a former Prime Minister of India there is bound to be law and order problem for the administration and under the circumstances the delay in inviting the candidates for putting their seals over the lock of the strong room appears to have been explained by the Returning Officer. It is true that it has been taken in the cross-examination of the Returning Officer (R.W. 21) and that of R.W. 31 that the strong room had been opened prior to counting of ballot papers for the purpose of spraying insecticides but the same has been explained by the Returning Officer by stating that as per instruction of the Election Commission of India the strong room was opened in presence of the candidates or their election agents for disinfection of ballot papers. Delay in inviting the candidates for putting their seals on the lock of the strong room and opening of the strong room as per instruction of the Election Commission of India for spraying insecticide may be ground for suspicion about manipulation of ballot boxes but the same having been explained by the Returning Officer, the very basis for suspicion is gone. It would not be out of place to mention here that it has come in the evidence of the Returning Officer that C.R.P.F. had been deputed to guard the strong room which had barbed wire fencing around that. It has also come in the evidence of the Returning Officer that sufficient lighting arrangement had been made and the candidates had also been allowed to keep their men for guarding the strong room. In view of this, the basis for suspicion that there was manipulation of ballot boxes is gone.

80. It has been alleged by the election petitioner in E.P. No. 5 of 1991 that there was wire not in between the counting tables and the place where the counting agents were sitting and hence the ballot

papers were not clearly visible to the counting agents and such arrangement had been made with a view to help the respondent by committing illegalities and irregularities in counting. The election petitioners have examined P.Ws. 10 to 15, 18 to 21, 25, 29, 30, 24 to 37, 39, 40, 44, 47 to 51 and 53 to 57 to say that there was wire net in between the counting tables and the counting agents as a result of which it was not possible for counting agents to see the ballot papers properly. The fact that there was wire net in between the counting tables and the place where the counting agents were sitting is not disputed but the allegation that it was not possible for counting agents to see the ballot papers has been challenged in the cross-examination of the aforesaid witnesses. Apart from that, respondent has examined R.Ws. 1, 3, 5 to 8, 15, 17 to 25, 30 and 31 to say that there was wire net in between the counting tables and the chairs meant for the counting agents but the ballot papers were clearly visible from the place where the counting agents were seated. Though it has come in the evidence of some of the aforesaid P.Ws. that Ram Kumar Singh, the election agent of election petitioner Raghunath Pandey, had filed written objection before the Returning Officer against the sitting arrangement for the counting agents but no such written objection has been brought on record. It was rightly pointed out by the learned counsel for the respondent that if the ballot papers were not properly visible to the counting agents then how they could detect the alleged irregularities in counting of ballot papers. It has come in the evidence (para 12) of P.W. 10 that there was no obstruction for the counting agents to go up to the wirenet. It has come in the evidence of P.W. 15 (para 4) that the holes in the wirenet were $\frac{1}{2}$ " in diameter. If so, the alleged difficulty in seeing the ballot papers appears to be imaginary. In view of what has been pointed out above there appears no merit in the allegation that due to wirenet in between counting tables and counting agents there was difficulty in seeing the ballot papers properly. It was rightly pointed out by the learned counsel for the respondent that for the safety of the ballot papers such arrangement has to be made.

81. It has been further alleged by the election petitioner in E.P. No. 5 of 1991 that the respondent belongs to the party in power in the State of Bihar and the Chief Minister of Bihar had made utterances which were published in newspapers that not a single congress candidate would be allowed to win and even if he would win the election, he would not be provided certificate of declaration and even if he obtains certificate of declaration, he would not be allowed to go to Delhi. It has been further alleged that in order to put his utterances into practice the Chief Minister on the eve of issuance of notification of the President of India calling upon the people to elect their members of Parliament made transfer of District Magistrates and Superintendents of Police besides other officials on mass scale, including that of Muzaffarpur. It has been further alleged that at the time of counting of ballot papers the Chief Minister came to Muzaffarpur and directed the Returning Officer to see that petitioner Raghunath Pandey is defeated and the respondent is elected. In support of the allegation to the aforesaid effect the election

petitioners have examined P.W. 21 Raghunath Pandey and P.W. 53 Ram Kumar Singh. P.W. 21 Raghunath Pandey has stated that Sri Laloo Prasad, Chief Minister had on the occasion of election in question uttered to the effect that no congress candidate would be allowed to win the election and if some congress candidate wins, he will not be granted certificate and will not be allowed to go to Delhi and his utterances to the aforesaid effect had been published in the daily newspapers "AAJ", "NAV BHARAT TIMES" and "HINDUSTAN" in April, 1991. It may be pointed out that cutting of newspapers has not been brought on record as exhibit in support of the evidence of P.W. 21 to the said effect. R.W. 21 does not say that the Chief Minister had stated to the said effect in his presence. P.W. 21 has further stated in para 20 of his deposition that up to seven round of counting he was leading by margin of 20,000 votes and thereafter, the Chief Minister reached there and then even the valid votes in his favour were not counted and even invalid votes were counted in favour of Janta Dal candidate. In Para 49 of his deposition P.W. 21 has further stated that on 16-6-1991 in the night Laloo Pd. Yadav, the Chief Minister, had come to Muzaffarpur and called the Returning Officer to the place where he was staying. It may be pointed out that P.W. 21 in para 49 of his deposition has admitted that neither he nor his men were present at the time of talk between Chief Minister and the Returning Officer. Then he can hardly be competent to say that the Chief Minister directed the Returning Officer to see that the congress candidate is defeated and the respondent is elected. As is apparent, the evidence of P.W. 21 regarding the utterances of the Chief Minister on the eve of poll and with regard to his direction to the Returning Officer does not appear to be reliable.

82. So far as P.W. 53 Ram Kumar Singh is concerned, he is the election agent of Raghunath Pandey (P.W. 21). He has stated that in the month of April, 1991 the Chief Minister Laloo Pd. Yadav had proclaimed that no congress candidate would be allowed to win the parliamentary election and even if any congress candidate happens to win, he would not be granted certificate and will not be allowed to go to Delhi. He has further stated that proclamation of the Chief Minister to the said effect was published in daily newspapers and in pursuance thereof there was mass transfer of officials, including S.P., D.M., D.D.C., and S.D.O. of Muzaffarpur at the State level against the direction of the Election Commission not to make transfer on the eve of election. It may be pointed out that P.W. 53 in para 37 of his deposition has admitted that he had not seen the direction of the Election Commission of India to the State Government not to make transfer of State Officials on the eve of election. However, the factum of proclamation of the Chief Minister Sri Laloo Pd. Yadav and the transfer of officials in April, 1991 has not been disputed in the cross-examination of P.W. 53 but there is nothing on the evidence of P.W. 53 to show that the Chief Minister had proclaimed to the said effect and had transferred the officials of Muzaffarpur at the instance of the Janta Dal candidate. It may create suspicion against

the conduct of the Chief Minister with regard to the parliamentary election in 1991 but suspicion cannot take the place of proof. P.W. 53 has further stated that up to seven rounds of counting Congress candidate was leading and thereafter, the Chief Minister came to Muzaffarpur, called the Returning Officer and thereafter even valid votes in favour of Congress candidate were not counted and even invalid in favour of Janta Dal candidate were counted. The evidence of P.W. 53 to the said effect has been challenged in his cross-examination (para 55). In para 55 of his deposition P.W. 53 has admitted that he had not seen the Chief Minister when he reached Muzaffarpur and called the Returning Officer. He has further admitted that he had not accompanied the Returning Officer while he was going to Chief Minister. If so, then P.W. 53 can hardly be competent to say that the Chief Minister directed the Returning Officer to see that congress candidate is defeated and the Janta Dal candidate is declared elected.

83. It may be pointed out that the evidence of the Returning Officer Hem Chand Shirohi (R.W. 21) in para 39 of his deposition shows that he had joined as District Magistrate at Muzaffarpur on 21-3-1991 and the Superintendent of Police and D.D.C. joined at Muzaffarpur after his joining there. The evidence of Returning Officer to the said effect shows that in fact, there was transfer of officials on the eve of election in question. Such transfers may or may not be said to be proper but the same having been made prior to issuance of notification concerning the election the same cannot be said to be illegal and can hardly be made a basis for holding that there was corrupt practice on the part of the respondent. Furthermore, the Returning Officer (P.W. 21) has in para 25 of his deposition denied that the Chief Minister had come to Muzaffarpur on the day of counting and had called him in the circuit house and directed him to see that Janta Dal candidate is declared elected. In view of the denial by the Returning Officer and incompetency of P.W.s 21 and 53 to say that the Chief Minister had directed the Returning Officer to see that Janta Dal candidate is elected and the Returning Officer acted accordingly, it is difficult to accept the allegation of the election petitioners to the said effect.

84. It has been alleged by the election petitioner in P. P. No. 3 of 1991 that just after the declaration of the election result the election petitioner Raghunath Pandey applied for certified copy of certain documents but the Returning Officer deliberately made undue delay in providing copies of the desired documents with ulterior motive of getting the period of limitation for filing the election petition expired so that the election petitioner may not be able to file election petition within time. The Returning Officer (R. W. 21) in para 28 of his deposition has stated that there was no intentional delay in issuing certified copy of desired documents to congress candidate. He has denied that there was no intentional delay with a view to help George Permisadis to cover up the irregularities alleged to have been committed. The election petitioner Raghunath Pandey has assumed him-

self as P. W. 21 to support the allegation to the aforesaid effect. Apart from the oral evidence of P.W. 21 certain documents bearing exhibit numbers 3[F, 3[G, 3[4 5 to 6 have been brought on record. Ext. 3[E is the letter dated 28-6-1991 addressed to the Chief Electoral Officer, Bihar by election petitioner Raghunath Pandey for direction to the Returning Officer for issuing certified copy of 15 papers detailed therein urgently and for getting the documents sealed. In the letter it has been alleged that the petitioner (Raghunath Pandey) has filed petition for issuing certified copy of papers urgently as he is going to file election petition but the Returning Officer in making unnecessary delay in issuing the same. It has been further alleged that the Returning Officer and some officers of his group have indulged in malpractices as detailed therein in the election in question. Ext. 5 is the teleprinter/nicnet/wireless message No. 208[C dated 28-6-91 sent to the Returning Officer by Chief Electoral Officer, Bihar requesting him to ensure that certified copies of 15 documents are supplied to Raghunath Pandey by 29-6-91 and all the materials connected with the election are kept in strict security. Ext. 3[G is a letter dated 29-6-91 addressed to the Returning Officer by the petitioner Raghunath Pandey. In the letter it has been stated that he has filed 15 petitions for issuing certified copies of documents urgently but the certified copy was not issued within time and then he informed the Electoral Officer, Bihar about that who by his wireless message No. 208[C dated 28-6-91 (Ext. 5) has directed you (Returning Officer) to issue certified copy by 29-6-91 positively but certified copy has not been issued as yet. In the letter it has been requested that certified copy be issued on 29-6-91 within office hours failing which the reason for not issuing the certified copy be made known to him. Ext. 3[H in a letter dated 30-6-91 addressed to Chief Electoral Officer, Bihar by petitioner Raghunath Pandey requesting him to direct the Returning Officer to issue certified copy of the documents. It has been alleged in the letter that the petition for issuing certified copy of documents urgently was filed on 25-5-91 in the Copying Department but the same has not been issued as the Returning Officer by getting his office and chamber locked from outside was getting the documents manipulated, tampered and replaced in his chamber and office to cover up the irregularities and illegalities committed by him in poll and in counting on the ballot papers. Ext. 6 is a letter dated 3rd July, 1991 addressed to the Commissioner Tirhut Division, Muzaffarpur, by the Chief Electoral Officer, Bihar, complaining about the conduct of the Returning Officer in not issuing certified copy of documents to Sri Raghunath Pandey in spite of his direction and requesting him to look into the matter personally and prevail upon the Returning Officer to supply certified copy of documents to Raghunath Pandey without any loss of time so that all the election re-

lated papers are sealed safely deposited. From the above documents it is apparent that election petitioner Raghunath Pandey had applied for issuance of certified copy of certain documents urgently but there was some delay in issuing the same. The delay on the part of the Returning Officer in issuing the certified copy of documents may create suspicion with regard to his conduct but the certified copy having been issued much before the expiry of the period of limitation it cannot be said with certainty that the Returning Officer was delaying the issuance of certified copy with a view to getting the limitation period expired so that the election petitioner Raghunath Pandey may not file election petition challenging the election in question. From my above discussions, it is apparent that the evidence adduced by the election petitioners does not show that respondent had indulged in corrupt practice as alleged for getting him elected. Accordingly, issue No. 5 is answered in negative.

Issue No. 6 : It has been alleged by the election petitioner in E.P. No. 5 of 1991 that the sitting arrangement for the counting agents was such that they could not see the ballot papers properly and this was done with a view to help the respondent. It has also been alleged that there was wire net in between the counting tables and the place where the counting agents had been seated. In support of allegation to this effect, the election petitioners have examined P.Ws. 10 to 13, 18 to 21, 25, 29, 30, 34 to 37, 39, 40, 44, 47 to 51 and 53 to 57. These witnesses have deposed to the effect that there was wire net 7" to 8" in height in between the counting tables and the chairs of the counting agents due to which the ballot papers were not clearly visible to the counting agents. As against this, the respondent has examined R.Ws. 1, 3, 5 to 8, 15, 17 to 25 and 30 and 31 to say that though there was wire net in between the counting table and the place where the counting agents were sitting but the ballot papers were clearly visible and there was no difficulty in seeing the ballot papers. As is apparent, the factum of wire net in between the counting tables and the sitting place of counting is not disputed but it is disputed of the ballot papers were clearly visible to the counting agents from the place where they were seated or not. It may be pointed out that it has come in the evidence group have indulged in malpractices as detailed (para 4) of P.W. 15 Devendra Sharma that the holes in the wire net were about 1½" in diameter. If it was so, then the difficulty in seeing the ballot papers as alleged by the witnesses for the election petitioners appears to be imaginary. It was rightly pointed out by the learned counsel for the respondent that if there was difficulty in seeing the ballot papers from the place where the counting agents were sitting then how could the counting agents detect the alleged irregularities in counting of ballot papers. The Returning Officer in his evidence as P.W. 21 has stated that there was an instruction

of the Election Commission of India to the effect that in case of need wire net may be erected in between the counting tables and the counting agents of that the ballot papers may not be touched by the counting agents. While discussing Issue No. 5 it has already been pointed out that the alleged difficulty in seeing the ballot papers from the place where the counting agents were sitting has no substance and it is difficult to accept that wire net had been erected in between the counting tables and the counting agents with a view to help the respondent.

85. The other allegation in this regard on behalf of the election petitioner in E.P. No. 5 of 1991 is that excess ballot papers had been found than the actual votes polled in the ballot boxes but still the ballot papers were counted. In support of this allegation, the election petitioners have examined P.Ws. 12, 14, 15, 17, 18, 21, 22, 29, 30, 33 to 36, 44, 46, 47, 52, 53, 55 and 56. As against this, the respondent has examined P.Ws. 6, 7, 18 and 20 to deny that excess ballot papers had been found in the ballot boxes at the counting tables at which they were counting agents. However, R.Ws. 22, 23 and 24 who were Assistant Returning Officers in Bochaha Sakra and Meenapur Assembly Constituency Segments of the Parliamentary Constituency in question at the time of counting of ballot papers have admitted that certain excess ballot papers had been found in the ballot boxes of some of the booths. Apart from the oral evidence of the aforesaid P.Ws. the election petitioners have also brought on record 65 ballot paper accounts (Exts. 10 to 10/64) of Kurahani and Sakara Assembly Constituency Segment 35 ballot papers accounts (Exts. 11 to 11/34) of Bachaha Assembly Constituency Segment and 25 ballot paper account (Exts. 12 to 12/24) of Meenapur Assembly Constituency Segment of the Parliamentary Constituency in question. A perusal of these ballot paper accounts shows that excess ballot papers had been found in the ballot boxes of some of the booths of the aforesaid Kurahani, Sakara, Bachaha and Meenapur Assembly Constituency Segment. It may be pointed out that finding of excess ballot papers in the ballot boxes would be material only when it is shown that excess ballot papers had affected or altered the result of the election. Finding of excess ballot papers in itself cannot justify setting aside of election unless it is shown that the booths in ballot boxes of which excess ballot papers had been found, had been captured and the excess ballot papers were spurious and had not been allotted to the booths concerned. It may be pointed out that the ballot paper accounts (Exts. 10, 11 and 12 series) brought on record by the election petitioners show that in all 856 excess ballot papers had been found in Kurahani, Sakara, Bachaha and Meenapur Assembly Constituency Segments. There was difference of about 52,000 votes in between the votes polled in favour of respondent and those in favour

of the election petitioner in F. R. No. 5 of 1991. That being as, counting of 256 excess ballot papers found in the ballot boxes of the aforesaid forum assembly constituency segments cannot be said to have affected the result of the election. There is no evidence to the effect that the excess ballot papers found in the ballot boxes of the concerned booths of the aforesaid four assembly constituency segments were spurious or had not been issued for the booths in the ballot boxes of which the same were found.

87. The election petitioner have examined certain witnesses to say that excess ballot papers had been found in Sakra Assembly Constituency segment also. I would like to refer to the evidence of the witnesses to this effect P.W.14 Girish Kumar in para 2 of his deposition has stated that excess ballot paper has been found in the ballot boxes of 12 booths which were counted at the counting table no. 9 of Sakra assembly constituency segment and had been counted inspite of his protest. On being asked, he could not say the booth numbers of the concerned booths P.W.15 Devendra Sharma in para 3 of his deposition has stated that at booth nos. 9, 11, 13, 174 and about 50 other booths of Sakra assembly constituency segment excess ballot papers were found in the ballot boxes. Subsequently, he has stated that no excess ballot papers had been found in the ballot boxes of booth no. 13. In his cross-examination (para 5) P.W.15 has admitted that he had neither seen the ballot paper account nor the Presiding Officer's diary in respect of the booths concerned. If so, then there appears no basis for saying that excess ballot papers had been found in the ballot boxes of the aforesaid booths. P.W.18 Kailash Pd. Sinha has stated that at about 50 booths of Sakra Assembly Constituency segment excess ballot papers had been found in the ballot boxes. He has not given the booth numbers in the ballot boxes of which excess ballot papers had allegedly been found. P.W.36 Nawal Kishore Prasad has stated that three excess ballot papers had been found in the ballot boxes of booth no. 70 as well as ballot boxes of booth no. 114 of Sakra assembly constituency segment which were counted at the counting table no. 12 in spite of his objection and then he informed Kailash Prasad Singh (P.W. 18), the counting agent at the Central table and Ram Kumar Singh (P.W. 58), the election agent of congress candidate, about that. It may be pointed out that Kailash Prasad Singh (P.W. 18) and Ram Kumar Singh (P.W. 53) have not corroborated the statement of P.W. 36 to the said effect. P.W. 47 Laxmi Narayan Singh has deposed that in the ballot boxes of booth no. 75 of Sakra Assembly constituency segment seven excess ballot papers had been found and were counted in spite of his objection and then he informed Kailash Prasad Singh (P.W. 18), counting agent of congress candidate at the Central Table, about that. Kailash Prasad Singh (P.W. 18) has not cor-

roborated the statement of P.W. 47 to the said effect. P.W. 53 Ram Kumar Singh has stated in his examination-in-Chief (Para 14) that in the ballot boxes of 50 booths of Sakra Assembly constituency segment ballot papers in excess than shown to have been polled were found and were counted inspite of his objection before the Assistant Returning Officer and Returning Officer. On being asked in his cross-examination (para 58) he could not say the booth numbers of those booths in the ballot boxes of which excess ballot papers had been found. However, ballot paper accounts concerning the concerned booths of Sakra Assembly constituency segment have been brought on record in support of the evidence of P. W. 14, 15, 18, 36, 47 and 53 to the said effect and they support oral evidence of the said P.Ws.

88. P.W. 55 Chandrika Choudhary who claims to have worked as counting agent at counting table no. 8 of Sakra assembly constituency segment, has stated that excess ballot papers had been found in the ballot boxes of booth nos. 110 and 154 of Sakra Assembly Constituency segment but were counted inspite of his objection and then he informed Vijay Kumar, the counting agent at the central table, about that, Vijay Kumar has not been examined to corroborate the testimony of P.W. 55 to the said effect. In his cross examination (para 6) P.W. 55 has stated that only one excess ballot paper had been found in the ballot box of booth no. 110 and one excess ballot paper had been found in the ballot box of booth no. 154 and his evidence finds support from Exts. 10/26 and Ext. 10/35.

89. There is no oral or documentary evidence to the effect that excess ballot papers had been found in the ballot boxes of Muzaffarpur and Gaighat Assembly constituency segments. As is apparent from my above discussion, there is no evidence to the effect that the excess ballot papers found in the ballot boxes of Bochaha, Sakra Menapur and Kurhani Assembly constituency segments were spurious or had not been allotted to the booths concerned. It has already been pointed out earlier that finding of excess ballot papers would be material only when it is shown that excess ballot papers has affected or altered the result of the election which is not the case in the election in question. It has also been pointed out earlier that there is no evidence to the effect that the booths in the ballot boxes of which some excess ballot papers had been found, had been captured. In view of what has been pointed out above, it is difficult to accept the case of the election petitioner in E.P. No. 5 of 1991 that counting of excess ballot papers had affected the result of the election in question.

90. It has been alleged by the election petitioner in P.E. No. 5 of 1991 that ballot papers had been found in bunches in the ballot boxes of several

booths but the same were counted and that has affected the result of the election in question. In support of this allegation, the election petitioners have examined P.Ws. 12, 14, 15, 17, 18, 21, 22, 29, 30, 31, 33 to 37, 39, 40, 44, 46, 48 to 54, 56 and 57. On the other hand, the respondent has examined P.Ws. 6, 7, 8, 15, 17 to 20, 22 and 23 to deny the aforesaid allegation. So there is oath against oath. Now it has to be seen as to how for the evidence of the aforesaid P.Ws. is reliable and acceptable.

91. P.W. 12 Sarju Tiwary has stated in para 6 of his deposition that Ram Kumar Singh, the election agent of congress candidate, had lodged written protest against the counting of ballot papers found in bundles in the ballot boxes concerning booth nos. 57, 58, 59, 95, 96 (Ka), 100, 122, 132, 187 and some other booths but in spite of written protest the ballot papers were counted. Similarly, in the evidence of P.W. 21 Raghunath Pandey is the election petitioner in E. P. No. 5 of 1991, it has come that the election agent Ram Kumar Singh (P.W. 53) had filed written objection against counting of such ballot papers. P.W. 46 Shambhu Nath Singh and P.W. 52 Mohan Kumar Mishra have stated that written protest had been filed before the Assistant Returning Officer against counting of such ballot papers. P.W. 53 Ram Kumar Singh has also stated that inspite of his written protest ballot papers in bundles in the ballot boxes of several booths of Meenapur, Kurhani, Sakra, Bochaha and Gaighat assembly constituency segments were counted. Strongly enough the protest petition said to have been filed by some of the aforesaid witnesses against counting of such ballot papers have not been brought on record as exhibits. In absence of any contemporaneous document it is difficult to rely on the oral testimony of the aforesaid P.Ws. that ballot papers had been found in bundles in ballot boxes at several booths.

92. Some of the witnesses like P.W. 15 Devendra Sharma and P.W. 17 Sivaram Choudhary have stated that number of such ballot papers was 12,000 and 30,000 respectively. Now P. Ws. 15 and 17 came to the figures of 12,000 and 30,000 appears to be mere guess work. In absence of contemporaneous document to support the oral evidence to the aforesaid effect, the oral evidence of P.Ws. cannot be safely accepted and that too when there is evidence from the side of respondent denying the allegation that ballot papers had been found in bundles in the ballot boxes of several booths.

93. It has been alleged by the election petitioner in E. P. No. 5 of 1991 that at several booths there was more than 90 per cent polling and out of the polled votes more than 90 per cent votes were exclusively in favour of respondent but inspite of that the ballot papers of these booths were counted. In support of this allegation the election

petitioners have examined P.Ws. 12, 13, 17, 21, 31, 37, 46, 48, 50, 51, 53 and 57. Against the evidence of the aforesaid P.Ws. the respondent has examined P.Ws. 5, 22, 23, 24, and 25 to say that ballot papers of even those booths were counted where there was more than 90 per cent polling and out of the polled votes more than 90 per cent votes were in favour of a particular candidate, but such ballot papers were kept separately and were not entered in the result sheet. The fact that there were certain booths where there was more than 90 per cent polling and out of the votes polled more than 90 per cent were in favour of a particular candidate has been admitted by P.W. 22 Beslal Singh, who was Assistant Returning Officer, in Bochaha assembly constituency at the time of counting of ballot papers. The statements of the aforesaid witnesses of the respondent that the ballot papers of such booths were kept separately and were not entered in the result sheet appears to be true in respect of only a few booths. There were such booths whose ballot papers were not only counted but were also entered in the result-sheet even though there was more than 90 per cent polling at such booths and out of the votes polled more than 90 per cent were in favour of a particular candidate. In this connection I would like to mention booth nos. 132 and 166 of Kurhani assembly constituency segment. From the ballot paper accounts of booth nos. 132 and 166 (Exts. 10/58 and 10/62) of Kurhani Assembly Constituency, segment it would appear that there was more than 90 percent polling at the said booths and out of the votes polled more than 90 per cent were in favour of respondent but inspite of that the ballot papers of booth Nos. 132 and 166 were included in the resultsheet (Ext. 8). That being so, there appears substance in the allegation of the election petitioner in E. P. No. 5 of 1991 that there were some irregularities in counting of ballot papers. It is true that the number of such booths is not large and would not perhaps affect the result of the election, in question but the fact that irregularities were committed by including the ballot papers of such booths in the resultsheet can hardly be denied.

94. It has been alleged by the election petitioner in E. P. No. 5 of 1991 that polling party deliberately inflated percentage of polling at some booths of Gaighat assembly constituency segment so that the votes of those booths may not be counted in favour of election petitioner in E. P. No. 5 of 1991. In support of this allegation, the election petitioners have examined P.W. 21 Raghunath Pandey who is election petitioner in E. P. No. 5/91. In para 21 of his deposition he has stated at 5 booths of Kurhani assembly constituency segment the genuine votes were in his favour but some ballot papers without the signature of the Presiding Officer were put in the ballot boxes by tampering with the seal with a view to show that

the polling was more than 90 per cent on the ground the ballot papers were not counted as the genuine votes were in his favour. It may be pointed out that P.W. 21 has not given the booth numbers of such booths. His evidence in his cross-examination (para 51) shows that P.W. 21 is a hearsay witness on this point. He (P.W. 21) claims to have learnt about it from his election agent Ram Kumar Singh (P.W. 53) and counting agent Siyaram Choudhary (P.W. 17) but counting agent Siya Ram Choudhary (P.W. 17) and election agent Ram Kumar Singh (P.W. 53) have not stated that they had informed P.W. 21 that polling party had deliberately inflated the percentage of polling at some booths of Gaighat Assembly constituency segment so that the ballot papers of those booths may not be counted in favour of P.W. 21. It would not be out of place to mention here that neither P.W. 17 Siyaram Choudhary, or P.W. 21 Raghunath Pandey nor P.W. 53 Ram Kumar Singh has claimed that they were present at the booths concerned at the time of polling and under the circumstances evidence of P.W. 21 of any other witness who was not present at the booth concerned at the time of polling will be hearsay evidence. In view of this it is difficult to rely on the evidence of P.W. 21. When the evidence of P.W. 21 is not relied on, there is no reliable evidence to support the above allegation.

95. It has been further alleged by the election petitioner in E.P. No. 5 of 1991 that ballot papers of those booths of Kurhani, Sakra, Bochaha and Meenapur assembly constituency segments which did not bear the signature of the Presiding Officer were counted when such ballot papers should have been treated as void. In support of this allegation the election petitioners have examined P.Ws. 21, 46, 47, 53 and 55. P.W. 21 Raghunath Pandey in para 16 of his deposition has stated that in the ballot boxes of four booths of Meenapur assembly constituency segment ballot papers were found without the signature of the Presiding Officer and they bore simply the initial of the Presiding Officer but such ballot papers were counted. The evidence of P.W. 21 of this effect has been challenged in his cross-examination (para 46 and 47). As admitted by him in his cross-examination (para 47) he is not an eye witness on this point rather he had heard about it from his election agent Ram Kumar Singh (P.W. 53), counting agent Siyaram Choudhary (P.W. 17), Kailash Prasad Singh (P.W. 18) Birendra Kumar Singh (P.W. 10) and Prem Kumar Singh (P.W. 22) but the said persons P.Ws. 10, 17, 18 and 53 have not corroborated the statement of P.W. 21 to the said effect. That being so, it is difficult to rely on the hearsay evidence of P.W. 21.

96. P.W. 46 Shambhu Nath Singh who claims to have worked as counting agent at the central

table of Kurhani assembly constituency segment has stated in para 4 of his deposition that in the ballot boxes of booth numbers 28, 47, 54 and 59 ballot boxes of booth numbers 38, 47, 54 and 56 cers thereon had been found which were in favour of Janta Dal candidate and were counted inspite of his objection and then he informed Sarju Tiwary (P.W. 12) the election agent. The evidence of P.W. 46 to the said effect has been challenged in his cross-examination. It may be pointed out that P.W. 46 in para 8 of his deposition has admitted that he had not lodged any written protest against counting of ballot papers of the said booths. Sarju Tiwary (P.W. 12) has not corroborated the statement of P.W. 46 to the said effect. In view of this even the evidence of P.W. 46 on this point is not reliable.

97. P.W. 47 Laxmi Narayan Singh who claims to have worked as counting agent of congress candidate at counting table No. 3 of Sakara Assembly constituency segment has stated in para 5 of his deposition that in the ballot boxes of booth no. 149 ballot papers were without signature of the Presiding Officer and were in favour of Janta Dal candidate but were counted in spite of his objection and then he informed Kailash Pd. Singh (P.W. 18), counting agent at the central table, about that. Kailash Pd. Singh (P.W. 18), has not corroborate the above statement of P.W. 47. Admittedly, P.W. 47 had not filed any written objection against counting of the ballot papers of the said booth. The factum of the ballot papers being without the signature of the Presiding Officer in the ballot boxes of the aforesaid booths has been challenged in his cross-examination but there is nothing in the evidence of P.W. 47 to show that the ballot papers were spurious and had not been allotted to the said booths.

98. P.W. 53 is Ram Kumar Singh, the election agent of the congress candidate. He has stated that majority of the ballot papers in the ballot boxes of 54 booths of Meenapur, 50 booths of Kurhani, 21 booths of Sakara and 10 booths of Bochaha and 26 booths of Gaighat assembly constituency segments did not bear the full signature of the Presiding Officers rather bore only the initial but all such ballot papers were counted inspite of written objection as the same were in favour of Janta Dal candidate. The evidence of P.W. 53 to the aforesaid effect has been challenged in his cross-examination (para 57). On being asked P.W. 53 could not give booth numbers in the ballot boxes of which ballot papers had been found without signature of the Presiding Officers. In view of this, even the evidence of P.W. 53 does not inspire confidence. P.W. 55, Chandirka Choudhary who claims to have worked as counting agent for independent candidate Shambhu Sah at counting table no. 8 of Sakara Assembly constituency segment, has stated in para 4 of his deposition that ballot papers found in the ballot boxes of

booth no. 37 of Sakara assembly constituency segment did not bear the signature of the Presiding Officer but were counted inspite of his protest and then he informed Vijay Kumar (not examined), the counting agent at the central table, about this. The factum of ballot papers not bearing signature has been challenged in his cross-examination (para 8). There is no contemporaneous document to support the evidence of P.W. 55 and others on this point. Even if it is accepted that ballot papers of some of the booths did not bear the full signature of the Presiding Officers rather bore only their initial or did not bear even initial of Presiding Officer the same itself may not be sufficient to justify rejection there of unless it is shown that such ballot papers were spurious and had not been issued for the booth concerned. There appears little substance in the aforesaid allegation and hence the same does not appear to be very material.

99. It has been alleged that the ballot papers of booth No. 165 of Bochaha Assembly Constituency segment which were in favour of election petitioner Raghunath Pandey were not counted on the ground that 306 ballot papers were in excess of those shown in the ballot paper account. The fact that the ballot papers of the said booth were not counted and included in the result sheet is apparent from the result sheet (Ext. 2|3) of Bochaha Assembly constituency segment. It may be pointed out that existence of 306 excess ballot papers in the ballot boxes of the said booth appears to be some what unusual. It is true that excess ballot papers had been found in the ballot boxes of some other booths also and the same were counted but existence of 306 excess ballot papers undoubtedly points towards something of unusual. It may be pointed out that Assistant Returning Officer of Bochaha Assembly constituency segment has been examined by respondent as R.W. 22 (Besial singh). The election petitioners do not appear to have asked him as to why the ballot papers of the aforesaid booth No. 165 of Bochaha Assembly constituency segment were not counted when the ballot papers of other booths having excess ballot papers were counted. This was not asked from the Returning Officer also who has been examined as R.W. 21. From the ballot paper account (Ext. 11|26) of booth No. 165 of Bochaha Assembly Constituency segment it appears that only 421 ballot papers out of 890 had been used at the said booth but in the ballot boxes 727 ballot papers were found. The report of the Presiding Officer would have thrown light in this respect but the same has not been brought on record as an exhibit. Under the circumstances it is difficult to accept the evidence that the counting authority committed irregularities by not counting and including the ballot papers of the said booth in the result-sheet.

100. It has been further alleged that the ballot papers of booth Nos. 169 and 172 of Bochaha

Assembly Constituency segment were not counted on the ground that the polling was disturbed though the Presiding Officer and patrolling magistrate had reported about peaceful polling at the said booth. Certain witnesses have been examined in support of this allegation but the polling officer, and the patrolling magistrate concerned have not been examined to support this allegation. Even the Presiding Officer's diary has not been brought on record as an exhibit for the purpose of showing that there was peaceful polling. From the resultsheet (Ext. 8|3) of Bachaha Assembly Constituency segment it appears that ballot papers of the said two booths were not included in the resultsheet. Ballot paper accounts has not been brought on record. In the last column of the resultsheet it has been noted that the ballot papers of the aforesaid two booths were not included in the resultsheet as there was irregularities in polling. Though the Returning Officer (R.W. 21) and the Assistant Returning Officer (R.W. 22) have been examined by the respondent but they do not appear to have exceed confronted with the question regarding not counting of the ballot papers of the aforesaid two booths. Under the circumstances it is difficult to disbelieve there mark in the last column of the resultsheet that the ballot papers of the said two booths were not included|counted in the resultsheet as there were irregularities at the time of polling at the said booths.

101. It has been alleged by the election petitioner in B.P. No. 5 of 1991 that in respect of booth number 175 of Bochaha Assembly Constituency segment ballot box was tampered with and spurious ballot papers were found which will be apparent from the report of the Presiding Officer but the ballot papers of the said booth were counted. It may be pointed out that the report of the Presiding Officer has not been brought on record, as out exhibit in support of this allegation. Under the circumstances simply on the basis of the oral evidence of certain witnesses it is difficult to accept that ballot boxes of the said booth had been tampered with and spurious ballot papers were found therein. It has been further alleged that different types of the signatures of the Presiding Officer were found on the ballot papers of booth No. 139 of Gaighat Assembly Constituency Segment and inspite of protest the ballot papers were counted. It may be pointed out that there is no evidence to the effect that the ballot papers found in the ballot boxes of the aforesaid booth No. 139 were spurious and had not been issued for the said booth. That being so, the ballot papers could not have been rejected simply on the ground that the signature of the Presiding Officer on the ballot papers was of different types. Different types of signatures are not impossible on the ballot papers in the tense circumstances in which the Presiding Officers are expected to conduct the poll those days when exchange of fire, capture of booths and murder in-

cluding that of the polling staff are becoming common day by day.

102. I may mention here that copy of the protest petition allegedly filed on behalf of the election petitioner Raghunath Pandey against counting of ballot papers of the said booth No. 139 has not been brought on record and hence there is no contemporaneous document to support the above allegation. Under the circumstance, simply on the basis of the oral evidence of certain witnesses it is difficult to accept the above allegation.

103. It has been alleged that a large number of ballot papers of election petitioner Raghunath Pandey were mixed with the ballot papers of the respondent and were counted in his favour and such irregularity was detected in Meenapur Assembly Constituency segment in course of the counting of ballot papers of booth Nos. 96 and this resulted in Hangama. In support of this allegation the election petitioners have examined P.W. 10, 12, 21, 29, 40 and 53. On the other hand, the respondent has examined P.W. 6, 7, 8, & 10 to deny the allegation to the aforesaid effect, P.W. 24 Gouri Shankar Mishra vote looted had worked as Assistant Returning Officer in Meenapur Assembly Constituency segment at the time of counting of ballot papers has stated in para 8 of his deposition that no counting staff has been caught while counting of ballot papers of congress candidate in favour of Janta Dal candidate and there was no lathi charge by the police. Similarly, the Returning Officer (P.W. 21) has denied the allegation to the aforesaid effect. P.W. 10 Birendra Kumar Singh while supporting the allegation to the said affect has stated that the concerned counting staff had been caught red handed while counting ballot papers of congress candidate in favour of Janta Dal candidate and had been taken to the Returning Officer by Ram Kumar Singh, the election agent of congress candidate but they were let off by the Returning Officer and the police resorted to lathi charge at the instance of the Returning Officer. It may be pointed out that P.W. 10 in para 16 of his deposition has admitted that ballot papers of congress candidate contained in the bundle of Janta Dal candidate had not been caught in his presence and under the circumstances P.W. 10 does not appear to be an eye witness.

104. P.W. 21 Raghunath Pandey while supporting the allegation to the above effect has stated that inspite of filing of petition for re-counting, the Returning Officer did not do anything in the matter rather there was lathi charge by the police at the instance of Returning Officer in which one counting agent, namely Ajit Kumar was injured. It may be pointed out that the evidence of P.W. 21 in para 44 of his deposition shows that he is a hearsay witness on this point. A petition (Ext. 3/8) for re-counting filed by the petitioner had

been brought on record but in it there is no allegation to the effect that the ballot papers of some booths of Meenapur Assembly Constituency segment which were in favour of congress candidate had been counted in favour of Janta Dal candidate and concerned counting staff were caught while doing so he allegation to the aforesaid effect does any action against them. In the petition there is general allegation of irregularity in counting. That being so, in allegation to the aforesaid effect does not find support from the petition (Ext. 3/8) for re-counting and under the circumstances it is difficult to accept the oral evidence of the aforesaid P.Ws. in support of the above allegation. There is no other contemporaneous document to substantiate the aforesaid allegation.

105. It has been further alleged by the election petitioner in E.P. No. 5 of 1991 that at 26 booths of Gaighat Assembly Constituency segment the Presiding Officer inflated the total number of votes up to the tune of 19433 in favour of respondent by putting a large number of ballot papers in ballot boxes after stamping them in favour of the respondent. It may be pointed out that there is practically no legal evidence in support of this allegation. Election petitioner Raghunath Pandey in para 22 of his deposition has simply stated that at 26 booths of Gaighat Assembly Constituency segment the polling was more than 90 per cent but the ballot papers were counted. This statement of P.W. 21 is inconsistent with his statement in paragraph 51 of his election petition No. 5 of 1991 in which it has been alleged that inspite of the fact that polling staff inflated the total number of votes at 26 booths of Gaighat Assembly Constituency segment the total polling did not exceed 90 per cent. In view of this it is difficult to accept the allegation to the aforesaid effect from my above discussion it is apparent that at booth Nos. 152 and 166 of Kurnool Assembly Constituency segment there was more than 90 per cent polling and out of the polled votes more than 90 per cent were in favour of the respondent but the ballot papers of the said two booths were not only counted but were also included in the resultsheet and by doing so, the Returning Officer undoubtedly committed irregularity in counting. It is further apparent that the evidence on record does not prove any other irregularity in the counting of ballot papers. Issue No. 6 is disposed of accordingly.

106. Issue No. 8.—The learned counsel for the respondent referred to paragraph 14 onwards in the election petition No. 5 of 1991 and contended that the allegations made therein suffer from vagueness and want of material facts and particular. This contention was controverted by the learned counsel for the election petitioner in E.P. No. 5 of 1991. After perusing paragraph 14 onwards in election petition No. 5 of 1991 I am of the opinion that there is no merit in the contention of the learned

counsel for the respondent that the allegations made therein suffer from vagueness and want of material facts and particular. Accordingly, Issue No. 8 is answered in the negative.

107. Issue No. 9.—It has been alleged by the election petitioner in E.P. No. 5 of 1991 that announcement of the result of election in question had been stayed by the Election Commission of India but inspite of that stay the Returning Officer announced the result and thus he acted in violation of the direction issued by the Election Commission. The election petitioners have examined P.W. 10, 12, 21 and 53 to support the case to the above effect. It may be pointed out that the Returning Officer in his examination-in-chief (para 9) has stated that he did not announce the result immediately after the completion of counting as a message had been received from the Election Commission of India not to announce the result till further orders of the Election Commission but on the next day the result was announced after receipt of communication from the Election Commission in this regard. The evidence of the Returning Officer to this effect finds support from the evidence of Sri T. N. Seshen (P.W. 61) Chief Election Commissioner. The Chief Election Commissioner as P.W. 61 has stated that by message dated 17-6-91 the Election Commission had directed the Returning Officer not to declare result unless cleared by the Commission. In his cross-examination the Chief Election Commissioner has stated that after receipt of the message from the Returning Officer at 23.55 hours on 17-6-91 a message in reply was sent to the Returning Officer on 18-6-91 permitting him to go ahead with the announcement of the result. In view of this categorical statement of Chief Election Commissioner (P.W. 61) to the said effect, there is no merit in the allegation that the result was announced without further direction of the Election Commission. Accordingly, Issue No. 9 is answered in the negative.

108. Issue No. 1.—In Election Petition No. 4 of 1991 the respondent filed a petition on 5-5-94 under Order 7 Rules 7 and 11 and section 151 C.P.C. read with section 87 of the Representation of People Act for dismissing election petition No. 4 of 1991 on the ground that during the pendency of the election petition election petitioner No. 2 namely, Ashok Kumar was declared disqualified by Election Commission of India by order dated 7th April, 1992 published in India Gazette on 6th June,

1992 for not lodging account on his election expenses. The factum of disqualification of election petitioner No. 2 Ashok Kumar in E.P. No. 4 of 1991 by the said order has not been disputed. It was also not disputed that the effect of such disqualification as contained in the said order is that Sri Ashok Kumar is disqualified for being chosen and for being a member of either house of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of the order i.e. from 7th April, 1992. It was contended on behalf of the respondent that on account of the said disqualification of election petitioner No. 2 Ashok Kumar, the election petitioner No. 4 of 1991 is not maintainable.

109. It may be pointed out that the question of disqualification must exist on the relevant day, namely the day of scrutiny according to sub-section 2 of section 36 of the Representation of People Act 1951. It was not disputed that the petitioner No. 2 Ashok Kumar was not disqualified either on the day of scrutiny or even on the date of election. Election petitioner Ashok Kumar has not sought a relief in his election petition No. 4 of 1991 to declare him as elected candidate on the ground that his nomination paper was improperly rejected due to which he could not contest the election. Simple relief sought for by him is declaration of the election of the respondent as void. The relief sought for by him has no relevancy with his subsequent disqualification. It was rightly contended on behalf of the election petitioner that even after the disqualification the election petitioner Ashok Kumar is a voter of the Parliamentary Constituency in question and according to section 81 of the Representation of People Act he is as good as a candidate to present and press his election petition coupled with the fact that he was not disqualified during the election period or on the day he presented the aforesaid election petition. It was further rightly contended on behalf of the said election petitioner that there are two petitioners in E.P. No. 4 of 1991 and petitioner No. 1 therein was not only a voter but was also one of the contesting candidates in the election in question and under the circumstances he is quite competent to prosecute election petition No. 4 of 1991. In view of this there appears no merit in the above contention of the learned counsel for the respondent that election petition No. 4 of 1991 is not maintainable due to subsequent disqualification of election petitioner No. 2 Ashok Kumar in the said election petition. There appears no defect in the

frame of the three election petitions. In view of this it is held that all the three election petitions as framed are maintainable.

110. Issue No. 10.—In view of my above findings the petitioners are entitled to the declaration sought for the three election petitions are hereby allowed on contest but under the circumstances of the case without cost against the respondent. The election of the respondent from 10 Muzaffarpur Parliamentary Constituency is hereby declared void. Let this decision be intimated to the Election Commission of India and the Speaker of the Lok Sabha.

(Aditya Narayan Chaturvedi)

Patna High Court,

The 14th day of May, 1996.

N.A.F.R./RPS/S.

[No. 82|BR|(4-5-6|91)|96]

By Order,

C. R. BRAHMAM. Secy.

नई दिल्ली, 13 अगस्त, 1996

शुद्धि-पत्र

आ. अ. 91.—प्रायोग की अधिसूचना सं. 56/96 (14)/न्यायिक-II तारीख 05-08-1996, के हिन्दी रुपान्तर में पैरा 1, 2 और 4 में पढ़ने वाला अंक "38", अंक "33" के रूप में पढ़ा जाए।

[सं. 56/96/न्यायिक-II]

आदेश में,

सुन्दर मेदीरत्ता, प्रधान सचिव

New Delhi, the 13th August, 1996

CORRIGENDUM

O.N. 91.—In Hindi version of the Commission's Notification No. 56/96(14)|JUD.-II, dated 05-08-1996, the figure "38" appearing in paras 1, 2 and 4 may be read as figure "33".

[No. 56|96-JUD.-II]

By Order,

S. K. MENDIRATTA, Principal Secy.

